

tend to effectuate the declared policy of the Act. It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the *Federal Register* because (1) the shipping season for onions has already begun and for maximum effectiveness this rule should apply to as many shipments as possible; (2) the proposed rule was discussed at an open public meeting, and all interested persons had an opportunity to voice concerns; and (3) there are no special preparations required of the handler that cannot be completed by the effective date.

#### List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is hereby amended as follows:

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601-674.

#### PART 959—ONIONS GROWN IN SOUTH TEXAS

2. In § 959.322, the introductory paragraph is revised to read as follows:

##### § 959.322 Handling regulation.

During the period beginning March 1 and ending June 15, no handler shall handle any onions unless they comply with paragraphs (a) through (d) or (e) or (f) of this section. In addition, no handler may package or load onions on Sunday during the period March 1 through May 20.

\* \* \* \* \*

Dated: April 8, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94-8890 Filed 4-11-94; 8:45 am]

BILLING CODE 3410-02-P

#### FEDERAL ELECTION COMMISSION

##### 11 CFR Part 102

[Notice 1994-5]

#### Special Fundraising Projects and Other Use of Candidate Names by Unauthorized Committees

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal of regulations to Congress.

SUMMARY: The Commission is amending its regulations regarding an unauthorized committee's use of a candidate's name in the title of a special fundraising project or other

communication on behalf of the unauthorized committee. The amendment permits such use, if the title clearly indicates opposition to the named candidate.

**DATES:** Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the *Federal Register*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** On July 10, 1992, the Commission sent to Congress new rules on special fundraising projects and other uses of candidate names by unauthorized committees. The rules prohibit the use of a candidate's name in the title of any fundraising project or other communication by any committee that has not been authorized by the named candidate. 11 CFR 102.14(a). The rules became effective on November 4, 1992. 57 FR 47258 (Oct. 15, 1992).

The rules construe 2 U.S.C. 432(e)(4), a provision of the Federal Election Campaign Act ("FECA" or "the Act") that prohibits the use of a candidate's name in the name of an unauthorized political committee. Prior to the 1992 revision, the Commission had construed this prohibition as applying only to the name under which a committee registers with the Commission [the "registered name"].

The Notice of Proposed Rulemaking ["NPRM"] was published in the *Federal Register* on April 15, 1992, 57 FR 13056. The Commission received 14 comments in response to this Notice. The final rules were published on July 15, 1992. 57 FR 31424.

On February 5, 1993, the Commission received a Petition for Rulemaking from Citizens Against David Duke ["CADD"], a proposed project of the American Ideas Foundation. The petition requested that the Commission reconsider and repeal the new rules, with particular emphasis on those titles that indicate opposition to, rather than support for, a named candidate.

The Commission published a Notice of Availability in the *Federal Register* on March 3, 1993. 58 FR 12189. Three comments were received in response to this Notice.

In response to these comments, the Commission published an NPRM proposing that the rule be amended so as to permit the use of candidate names

in titles that clearly indicate opposition to the named candidate. 58 FR 65559 (Dec. 15, 1993). The Commission received four comments in response to this Notice, three of which reflected in whole or in part comments submitted earlier in the course of the rulemaking.

Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on April 6, 1994.

#### Explanation and Justification

In *Common Cause v. FEC*, 842 F.2d 436 (D.C. Cir. 1988), the United States Court of Appeals for the District of Columbia Circuit upheld the Commission's authority to interpret the prohibition at 2 U.S.C. 432(e)(4) on the use of a candidate's name in the name of an unauthorized committee as applying only to the name under which the committee registered with the Commission, since "[an] agency's construction, if reasonable, must ordinarily be honored." *Id.* at 439-40. However, the court recognized that an interpretation imposing a more extensive ban on the use of candidate names by unauthorized committees, such as prohibiting their use in the titles of any fundraising projects sponsored by an unauthorized committee, "could also be accommodated within the provision's literal language." *Id.* at 440.

Some commenters on both the 1992 and the current NPRM noted that this rulemaking implicates protected first amendment rights, and that any infringement on these rights is subject to strict scrutiny by reviewing courts. However, it is well established that first amendment rights are not absolute when balanced against the government's interest in protecting the integrity of the electoral process. "Even a 'significant interference' with protected rights [ ] may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment" of those rights. *Buckley v. Valeo*, 424 U.S. 1, 25 (1975) (citations omitted). The *Common Cause* court deferred to the Commission's judgment that literal adherence to the language of section 432(e)(4), coupled with the disclaimer requirements of 2 U.S.C. 441d(a), struck the proper balance at that time. 842 F.2d at 440. Section 441d(a)(3) requires that communications by unauthorized committees include a



disclaimer that clearly identifies who paid for the communication, and states whether it was authorized by any candidate or candidate's committee.

The *Common Cause* decision grew out of the 1980 presidential election. Since that time, the Commission has become increasingly concerned over the possibility for confusion or abuse under the interpretation upheld in that case, that is, limiting the FECA's "name" prohibition to a committee's registered name. Aware of these constitutional concerns, the 1992 NPRM sought comments on two modifications to the rules then in effect that fell short of an overall ban.

Under the first proposal, the political committee sponsoring the project would have been required to include in the required disclaimer the name of the committee paying for the project, as well as a statement whether the project had been authorized by the candidate whose name appeared in the title, or by any other candidate. As part of this proposal, the Commission also sought comments on whether disclaimer size and/or location requirements should be imposed in this situation. Second, a committee would not have been allowed to accept checks received in response to a special project solicitation, unless the checks were made payable to the registered name of the committee.

However, the Commission also sought comments on a proposed total ban on the use of a candidate's name in the project title of an unauthorized committee's special fundraising project; and several commenters endorsed this approach. After considering all comments received in response to that Notice, the Commission decided that the total ban was justified.

The rulemaking record contains substantial evidence that potential contributors often confuse an unauthorized committee's registered name with the names of its fundraising projects, and wrongly believe that their contributions will be used in support of the candidate(s) named in the project titles. Although one commenter on the present rulemaking stated that the Commission had overstated the potential for fraud and abuse in this area, no comment provided information to refute this earlier determination.

This rule is narrowly designed to further the legitimate governmental interest in minimizing the possibility of fraud and abuse in this situation. Committees are not barred from establishing specially designated projects: They are free to choose whatever project title they desire, as long as it does not include the name of a federal candidate. Also, committees

may freely discuss any number of candidates, by name, in the body of a communication. The newly-revised rule further enhances unauthorized committees' constitutional rights by exempting from the ban those titles that clearly indicate opposition to the named candidate.

It is clear from the rulemaking record that the situation today differs significantly from that of the early 1980's, when the *Common Cause* case was litigated. Prior to the adoption of the 1992 rules, the use of candidate names in the titles of projects or other unauthorized communications had increasingly become a device for unauthorized committees to raise funds or disseminate information. Under the former interpretation, a candidate who objected to the use of his or her name in this manner, who shared in none of the funds received in response to the solicitation, and/or who disagreed with the views expressed in the communication, was largely powerless to stop it. For example, in 1984 a United States Senator requested, and received, permission to obtain from Commission records the names and addresses of those who had responded to unauthorized solicitations made in his name, to inform these contributors that he had not authorized the solicitation. However, he could not suggest that contributors send donations instead to his campaign committee. See Advisory Opinion 1984-2.

An examination of the record in the 1992 rulemaking, which contains information that was not available when that NPRM was put out for comment, further supports the Commission's conclusion that this balance has now shifted so as to justify a broader interpretation. For example, a comment from an authorized committee of a major party presidential candidate stated that an unauthorized project using that candidate's name raised over \$10,000,000 during the 1988 presidential election cycle, despite the candidate's disavowal of and efforts to stop these activities. The same unauthorized committee was raising money by means of a comparable project, using that same candidate's name, in the 1992 election cycle. This comment added that two other unauthorized projects by that same committee raised over \$4,000,000 and nearly \$400,000 in the name of two other presidential candidates in the 1988 election cycle. None of the named candidates received any of the money that was collected in their names. One of these candidates, a United States Senator, also submitted comments

asking that the pertinent rules be strengthened.

In addition, a television documentary, a videotape of which was placed in the rulemaking record, detailed how an unauthorized Political Action Committee had, over several election cycles, established numerous projects whose titles included the names of federal candidates. The named candidates had no connection with the projects, had not authorized the use of their names in this manner, and received no money from the \$9 million raised in response to these appeals. Program investigators found that elderly people are particularly vulnerable to being misled in this manner, since they may not notice or fail to fully comprehend the disclaimers included with the solicitations.

Such cases point up the potential for confusion or abuse when an unauthorized committee uses a candidate's name in the title of a special fundraising project, or other designation under which the committee operates. A person who receives such a communication may confuse the project name with the committee's registered name, and thus may not understand that the communication is made on behalf of the unauthorized committee rather than the candidate whose name appears in the project's title. Potential donors may think they are giving money to the candidate named in the project's title, when this is not the case.

Some comments that opposed any modifications to the former standard argued that current disclaimer requirements at section 441d(a)(3) were sufficient to minimize the potential for confusion in this area. Others suggested stronger, or larger, disclaimers, in place of the overall ban. One suggested that the disclaimer be in as large and as bold a typeface as the largest, boldest use of the candidate's name anywhere in the communication. The Commission believes that such an approach could be more burdensome than the current ban, while still not solving the potential for fraud and abuse in this area. The requirement that checks be made only to the sponsoring committee's registered name would similarly not ensure that the contributor did not erroneously believe the money would be used to support the candidate(s) named in the project's title. It also would be difficult, if not practically impossible, to monitor and enforce, since nothing on the public record reflects who the payee is on a contributor's check.

It is important to note that the ban applies only to project titles, and not to the body of the accompanying communication. Unauthorized



committees remain free to discuss candidates throughout the communication; and to use candidates' names as frequently, and highlight them as prominently (in terms of size, typeface, location, and so forth) as they choose. In other words, while a committee could not establish a fundraising project called "Citizens for Doe," if Doe is a federal candidate, it could use a subheading such as "Help Us Elect Doe to Federal Office," and urge Doe's election, by name, in large, highlighted type, throughout the communication.

Also, by amending the regulation to exclude from the ban names that indicate opposition to the named candidate, the Commission has acceded to the petitioner's main concern, amending the rules to permit the American Ideas Foundation to use the names of federal candidates in titles that clearly indicate opposition to such candidates. As stated in its summary of the petition (petition, p. 1), "There is no danger of confusion or abuse inherent in the use of a candidate's name by a committee or project which opposes the candidate." The Commission recognizes that the potential for fraud and abuse is significantly reduced in the case of such titles, and has accordingly revised its rules to permit them.

The petition also asked that the rule exclude from the ban the use of candidate names in titles by those committees "that are authorized to use the candidate's name, which are engaged in activities which will not actively mislead the public or injure the candidate, or which otherwise clearly indicate that they are unauthorized." However, if a candidate authorizes the use of his or her name in a fundraising project, the committee becomes an authorized committee, and this rule would not apply. The phrase "engaged in activities which will not actively mislead the public or injure the candidate" is vague and would result in the need to determine on a case-by-case basis whether covered communications met this test. The Commission has already determined that a stronger disclaimer requirement would not be sufficient in and of itself to meet this concern. Given the wide range of options that committees continue to have regarding use of candidate names, imposing further requirements could well prove more burdensome than the present approach.

The NPRM proposed that exempted titles would have to "clearly and unambiguously [show] opposition to the named candidate by using words such as 'defeat' or 'oppose.'" The requirement that such specific

"triggering words" be included in the title has been deleted from the final rule, since the Commission recognizes that certain titles, such as "Citizens Fed Up with Doe," may clearly and unambiguously indicate opposition to a candidate even though no individual word in the title has that import.

One commenter argued that legislative action is necessary to effectuate this change, noting that the Commission has in the past included this issue in the legislative recommendations it submits to Congress each year. However, it is well established that courts will not rely on an agency's legislative recommendation to undermine the agency's construction of a statute as authorizing it to act. The Supreme Court has stated that holding an agency's legislative recommendation against it is disfavored, because "[p]ublic policy requires that agencies feel free to ask [Congress for] legislation," and this freedom to act would be chilled if such requests could later be held against them. *Wong Yang Sung v. McGrath*, 339 U.S. 33, 47 (1950); see also, *Warner-Lambert Co. v. FTC*, 562 F.2d 749, 758 n. 39 and cases cited therein (D.C. Cir. 1977), cert. denied, 435 U.S. 950 (1978).

The Commission notes that David Duke is not currently a candidate for federal office, so the use of his name in a project title is not prohibited by these rules. Should he again become a federal candidate, such use of his name would be governed by these revised rules.

#### **Certification of No Effect Pursuant to 5 U.S.C. 605(B) [Regulatory Flexibility Act]**

This final rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that any small entities affected are already required to comply with the Act's requirements in this area. Also, the rule broadens the Commission's interpretation of these requirements.

#### **List of Subjects in 11 CFR Part 102**

Campaign funds, Political candidates, Political committees and parties, Reporting requirements.

For the reasons set out in the preamble, subchapter A, chapter I of title 11 of the Code of Federal Regulations is amended to read as follows:

#### **PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)**

1. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 438(a)(8), 441d.

2. Section 102.14 is amended by adding paragraph (b)(3) to read as follows:

**§ 102.14 Names of political committees (2 U.S.C. 432(e)(4) and (5)).**

\* \* \* \* \*

(b) \* \* \*

(3) An unauthorized political committee may include the name of a candidate in the title of a special project name or other communication if the title clearly and unambiguously shows opposition to the named candidate.

\* \* \* \* \*

Dated: April 6, 1994.

Trevor Potter,  
Chairman.

[FR Doc. 94-8690 Filed 4-11-94; 8:45 am]

BILLING CODE 6715-01-M

#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 55**

[FRL-4862-1]

#### **Outer Continental Shelf Air Regulations; Consistency Update for California**

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final rule.

**SUMMARY:** The EPA is finalizing the updates of the Outer Continental Shelf ("OCS") Air Regulations proposed in the Federal Register on January 7, 1994 and February 8, 1994. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"), as amended by the Clean Air Act Amendments of 1990. The portion of the OCS Air Regulations that is being updated pertains to the requirements for OCS sources for which the San Luis Obispo County Air Pollution Control District (San Luis Obispo County APCD), the Santa Barbara County Air Pollution Control District (Santa Barbara APCD), the South Coast Air Quality



Management District (South Coast AQMD), and the Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The intended effect of approving the requirements contained in "San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources" (March 11, 1994), "Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources" (March 11, 1994), "South Coast Air Quality Management District Requirements Applicable to OCS Sources" (March 11, 1994), and "Ventura County Air Pollution Control District Requirements Applicable to OCS Sources" (March 11, 1994) is to regulate emissions from OCS sources in accordance with the requirements onshore.

**EFFECTIVE DATE:** This final rule is effective May 12, 1994.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket, 6102, 401 "M" Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1197.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On January 7, 1994 at 59 FR 994 and February 8, 1994 at 59 FR 5745, EPA proposed to approve the following requirements into the Outer Continental Shelf Air Regulations: "San Luis Obispo County Air Pollution Control District Requirements applicable to OCS Sources", "Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources", "South Coast Air Quality Management District Requirements Applicable to OCS Sources", and "Ventura County Air Pollution Control District Requirements Applicable to OCS Sources". These requirements represent the third update of part 55 and are being promulgated in response to the submittal of rules from local air pollution control agencies. EPA has evaluated the above requirements to ensure that they are rationally related to the attainment or maintenance of

Federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

A 30-day public comment period was provided at 59 FR 994 and 59 FR 5745 and no comments were received.

#### **EPA Action**

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. One minor change was made to the proposal set forth in the January 7, 1994 and February 8, 1994 notices of proposed rulemaking. This change includes the addition of a document date for the requirements to be incorporated into part 55. EPA is approving the submittal as modified under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore.

#### **Administrative Requirements**

##### **A. Executive Order 12291 (Regulatory Impact Analysis)**

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. This exemption continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

##### **B. Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final OCS regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this final rule will not have a significant impact on a substantial number of small entities.

#### **C. Paperwork Reduction Act**

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final OCS rulemaking dated September 4, 1992 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060-0249. This consistency update does not add any further requirements.

#### **List of Subjects in 40 CFR Part 55**

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 23, 1994.

Felicia Marcus,  
Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is to be amended as follows:

#### **PART 55—[AMENDED]**

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101-549.

2. Section 55.14 is amended by revising paragraphs (e) (3) (ii) (E), (F), (G), and (H) to read as follows:

**§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.**

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(ii) \* \* \*

(E) *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources*, March 11, 1994.

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, March 11, 1994.

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources*, March 11, 1994.

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, March 11, 1994.

\* \* \* \* \*



3. Appendix A to part 55 is amended by revising paragraphs (b)(5), (6), (7), and (8) under the heading "California" to read as follows:

**Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference into Part 55, by State**

**California**

(b) \* \* \*

(5) The following requirements are contained in *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources*, March 11, 1994:

- Rule 103 Conflicts Between District, State and Federal Rules (Adopted 8/6/76)
- Rule 104 Action in Areas of High Concentration (Adopted 7/5/77)
- Rule 105 Definitions (Adopted 10/6/93)
- Rule 106 Standard Conditions (Adopted 8/6/76)
- Rule 108 Severability (Adopted 11/13/84)
- Rule 113 Continuous Emissions Monitoring, except F. (Adopted 7/5/77)
- Rule 201 Equipment not Requiring a Permit, except A.1.b. (Adopted 11/5/91)
- Rule 202 Permits, except A.4. and A.8. (Adopted 11/5/91)
- Rule 203 Applications, except B. (Adopted 11/5/91)
- Rule 204 Requirements, except B.3. and C. (Adopted 8/10/93)
- Rule 209 Provision for Sampling and Testing Facilities (Adopted 11/5/91)
- Rule 210 Periodic Inspection, Testing and Renewal of Permits to Operate (Adopted 11/5/91)
- Rule 213 Calculations, except E.4. and F. (Adopted 8/10/93)
- Rule 302 Schedule of Fees (Adopted 9/15/92)
- Rule 305 Fees for Major Non-Vehicular Sources (title change—Adopted 9/15/92)
- Rule 401 Visible Emissions (Adopted 8/6/76)
- Rule 403 Particulate Matter Emissions (Adopted 8/6/76)
- Rule 404 Sulfur Compounds Emission Standards, Limitations and Prohibitions (Adopted 12/6/76)
- Rule 405 Nitrogen Oxides Emission Standards, Limitations and Prohibitions (Adopted 11/13/84)
- Rule 406 Carbon Monoxide Emission Standards, Limitations and Prohibitions (Adopted 11/14/84)
- Rule 407 Organic Material Emission Standards, Limitations and Prohibitions (Adopted 1/10/89)
- Rule 411 Surface Coating of Metal Parts and Products (Adopted 1/10/89)
- Rule 416 Degreasing Operations (Adopted 6/18/79)
- Rule 417 Control of Fugitive Emissions of Volatile Organic Compounds (Adopted 2/9/93)
- Rule 422 Refinery Process Turnarounds (Adopted 6/18/79)
- Rule 501 General Burning Provisions (Adopted 1/10/89)
- Rule 503 Incinerator Burning, except B.1.a. (Adopted 2/7/89)

**Rule 601 New Source Performance Standards (Adopted 9/4/90)**

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, March 11, 1994:

- Rule 102 Definitions (Adopted 7/30/91)
- Rule 103 Severability (Adopted 10/23/78)
- Rule 201 Permits Required (Adopted 7/2/79)
- Rule 202 Exemptions to Rule 201 (Adopted 3/10/92)
- Rule 203 Transfer (Adopted 10/23/78)
- Rule 204 Applications (Adopted 10/23/78)
- Rule 205 Standards for Granting Applications (Adopted 7/30/91)
- Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
- Rule 207 Denial of Application (Adopted 10/23/78)
- Rule 210 Fees (Adopted 5/7/91)
- Rule 212 Emission Statements (Adopted 10/20/92)
- Rule 301 Circumvention (Adopted 10/23/78)
- Rule 302 Visible Emissions (Adopted 10/23/78)
- Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
- Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
- Rule 306 Dust and fumes-Northern Zone (Adopted 10/23/78)
- Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
- Rule 308 Incinerator Burning (Adopted 10/23/78)
- Rule 309 Specific Contaminants (Adopted 10/23/78)
- Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
- Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
- Rule 312 Open Fires (Adopted 10/2/90)
- Rule 317 Organic Solvents (Adopted 10/23/78)
- Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
- Rule 321 Control of Degreasing Operations (Adopted 7/10/90)
- Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
- Rule 323 Architectural Coatings (Adopted 2/20/90)
- Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
- Rule 325 Storage of Petroleum and Petroleum Products (Adopted 12/10/91)
- Rule 326 Effluent Oil Water Separators (Adopted 10/23/78)
- Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
- Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
- Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 11/13/90)
- Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
- Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)

**Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (12/10/91)**

**Rule 342 Control of Oxides of Nitrogen (NO<sub>x</sub> from Boilers, Steam Generators and Process Heaters) (03/10/92)**

**Rule 505 Breakdown Conditions Sections A, B.1., and D. only (Adopted 10/23/78)**  
**Rule 603 Emergency Episode Plans (Adopted 6/15/81)**

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements Applicable to OCS Sources*, March 11, 1994:

- Rule 102 Definition of Terms (Adopted 11/4/88)
- Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
- Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
- Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
- Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
- Rule 201 Permit to Construct (Adopted 1/5/90)
- Rule 201.1 Permit Conditions in federally Issued Permits to Construct (Adopted 1/5/90)
- Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
- Rule 203 Permit to Operate (Adopted 1/5/90)
- Rule 204 Permit Conditions (Adopted 3/6/92)
- Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
- Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
- Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
- Rule 208 Permit for Open Burning (Adopted 1/5/90)
- Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
- Rule 210 Applications (Adopted 1/5/90)
- Rule 212 Standards for Approving Permits (9/6/91) except (c)(3) and (e)
- Rule 214 Denial of Permits (Adopted 1/5/90)
- Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
- Rule 218 Stack Monitoring (Adopted 8/7/81)
- Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 9/11/92)
- Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
- Rule 221 Plans (Adopted 1/4/85)
- Rule 301 Permit Fees (Adopted 6/11/93) except (a)(1) "(see subdivision (n))"; (a)(4) "or share of Regional Clean Air Incentives Market (RECLAIM) Trading Credits (RTCs) [see subdivision (n)]"; (a)(8); (a)(9); (b)(11); (b)(12); (b)(17) last three lines; (n); "(SUMMARY)—FACILITY PERMIT FEES"; "TABLE VI—RELCAIM RTC ALLOCATIONS AND BREAKDOWN EMISSION FEES"; "TABLE VI-A—RECLAIM RTCS REPRESENTED BY ONE FEE SHARE"
- Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 6/11/93)
- Rule 304.1 Analyses Fees (Adopted 6/6/92)
- Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
- Rule 306 Plan Fees (Adopted 7/6/90)



Rule 401 Visible Emissions (Adopted 4/7/89)  
 Rule 403 Fugitive Dust (Adopted 7/9/93)  
 Rule 404 Particulate Matter-Concentration (Adopted 2/7/86)  
 Rule 405 Solid Particulate Matter-Weight (Adopted 2/7/86)  
 Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)  
 Rule 408 Circumvention (Adopted 5/7/76)  
 Rule 409 Combustion Contaminants (Adopted 8/7/81)  
 Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)  
 Rule 430 Breakdown Provisions, (a) and (e) only. (Adopted 5/5/78)  
 Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 10/2/92)  
 Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)  
 Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)  
 Rule 441 Research Operations (Adopted 5/7/76)  
 Rule 442 Usage of Solvents (Adopted 3/5/82)  
 Rule 444 Open Fires (Adopted 10/2/87)  
 Rule 463 Storage of Organic Liquids (Adopted 12/7/90)  
 Rule 465 Vacuum Producing Devices or Systems (Adopted 11/1/91)  
 Rule 468 Sulfur Recovery Units (Adopted 10/8/76)  
 Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)  
 Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)  
 Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)  
 Rule 476 Steam Generating Equipment (Adopted 10/8/76)  
 Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77)  
 Addendum to Regulation IV (Effective 1977)  
 Rule 701 General (Adopted 7/9/82)  
 Rule 702 Definitions (Adopted 7/11/80)  
 Rule 704 Episode Declaration (Adopted 7/9/82)  
 Rule 707 Radio-Communication System (Adopted 7/11/80)  
 Rule 708 Plans (Adopted 7/9/82)  
 Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)  
 Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)  
 Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)  
 Rule 709 First Stage Episode Actions (Adopted 7/11/80)  
 Rule 710 Second Stage Episode Actions (Adopted 7/11/80)  
 Rule 711 Third Stage Episode Actions (Adopted 7/11/80)  
 Rule 712 Sulfate Episode Actions (Adopted 7/11/80)  
 Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)  
 Regulation IX-New Source Performance Standards (Adopted 4/9/93)  
 Rule 1106 Marine Coatings Operations (Adopted 8/2/91)  
 Rule 1107 Coating of Metal Parts and Products (Adopted 8/2/91)  
 Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)

Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)  
 Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)  
 Rule 1110.2 Emissions from Gaseous and Liquid-Fueled Internal Combustion Engines (Adopted 9/7/90)  
 Rule 1113 Architectural Coatings (Adopted 9/6/91)  
 Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)  
 Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/1/78)  
 Rule 1122 Solvent Cleaners (Degreasers) (Adopted 4/5/91)  
 Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)  
 Rule 1129 Aerosol Coatings (Adopted 11/2/90)  
 Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/4/89)  
 Rule 1140 Abrasive Blasting (Adopted 8/2/85)  
 Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)  
 Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 1/6/89)  
 Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 7/10/92)  
 Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)  
 Rule 1149 Storage Tank Degassing (Adopted 4/1/88)  
 Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Application (Adopted 12/4/92)  
 Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 12/7/90)  
 Rule 1176 Sumps and Wastewater Separators (Adopted 1/5/90)  
 Rule 1301 General (Adopted 6/28/90)  
 Rule 1302 Definitions (Adopted 5/3/91)  
 Rule 1303 Requirements (Adopted 5/3/91)  
 Rule 1304 Exemptions (Adopted 9/11/92)  
 Rule 1306 Emission Calculations (Adopted 5/3/91)  
 Rule 1313 Permits to Operate (Adopted 6/28/90)  
 Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 10/6/89)  
 Rule 1701 General (Adopted 1/6/89)  
 Rule 1702 Definitions (Adopted 1/6/89)  
 Rule 1703 PSD Analysis (Adopted 10/7/88)  
 Rule 1704 Exemptions (Adopted 1/6/89)  
 Rule 1706 Emission Calculations (Adopted 1/6/89)  
 Rule 1713 Source Obligation (Adopted 10/7/88)  
 Regulation XVII Appendix (effective 1977)

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements*

*Applicable to OCS Sources*, March 11, 1994:  
 Rule 2 Definitions (Adopted 12/15/92)  
 Rule 5 Effective Date (Adopted 5/23/72)  
 Rule 6 Severability (Adopted 11/21/78)  
 Rule 7 Zone Boundaries (Adopted 6/14/77)  
 Rule 10 Permits Required (Adopted 7/5/83)  
 Rule 11 Application Contents (Adopted 8/15/78)  
 Rule 12 Statement by Application Preparer (Adopted 6/16/87)  
 Rule 13 Statement by Applicant (Adopted 11/21/78)  
 Rule 14 Trial Test Runs (Adopted 5/23/72)  
 Rule 15 Permit Issuances (Adopted 7/5/83)  
 Rule 16 Permit Contents (Adopted 12/2/80)  
 Rule 18 Permit to Operate Application (Adopted 8/17/76)  
 Rule 19 Posting of Permits (Adopted 5/23/72)  
 Rule 20 Transfer of Permit (Adopted 5/23/72)  
 Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)  
 Rule 23 Exemptions from Permits (Adopted 6/8/93)  
 Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 09/15/92)  
 Rule 26 New Source Review (Adopted 10/22/91)  
 Rule 26.1 New Source Review-Definitions (Adopted 10/22/91)  
 Rule 26.2 New Source Review-Requirements (Adopted 10/22/91)  
 Rule 26.3 New Source Review-Exemptions (Adopted 10/22/91)  
 Rule 26.6 New Source Review-Calculations (Adopted 10/22/91)  
 Rule 26.8 New Source Review-Permit To Operate (Adopted 10/22/91)  
 Rule 26.10 New Source Review-PSD (Adopted 10/22/91)  
 Rule 28 Revocation of Permits (Adopted 7/18/72)  
 Rule 29 Conditions on Permits (Adopted 10/22/91)  
 Rule 30 Permit Renewal (Adopted 5/30/89)  
 Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)  
 Appendix II-A Information Required for Applications to the Air Pollution Control District (Adopted 12/86)  
 Appendix II-B Best Available Control Technology (BACT) Tables (Adopted 12/86)  
 Rule 42 Permit Fees (Adopted 12/22/92)  
 Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)  
 Rule 45 Plan Fees (Adopted 6/19/90)  
 Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)  
 Rule 50 Opacity (Adopted 2/20/79)  
 Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)  
 Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)  
 Rule 54 Sulfur Compounds (Adopted 7/5/83)  
 Rule 56 Open Fires (Adopted 5/24/88)  
 Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)  
 Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)  
 Rule 62.7 Asbestos-Demolition and Renovation (Adopted 6/16/92)



Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)  
 Rule 64 Sulfur Content of Fuels (Adopted 7/5/83)  
 Rule 66 Organic Solvents (Adopted 11/24/87)  
 Rule 67 Vacuum Producing Devices (Adopted 7/5/83)  
 Rule 68 Carbon Monoxide (Adopted 6/14/77)  
 Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 6/8/93)  
 Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)  
 Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)  
 Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)  
 Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)  
 Rule 72 New Source Performance Standards (NSPS) (Adopted 7/13/93)  
 Rule 74 Specific Source Standards (Adopted 7/6/76)  
 Rule 74.1 Abrasive Blasting (Adopted 11/12/91)  
 Rule 74.2 Architectural Coatings (Adopted 08/11/92)  
 Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)  
 Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)  
 Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)  
 Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)  
 Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)  
 Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/3/91)  
 Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)  
 Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO<sub>x</sub> (Adopted 4/9/85)  
 Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 11/17/92)  
 Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 12/3/91)  
 Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1-5MM BTUs) (Adopted 5/11/93)  
 Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)  
 Rule 74.20 Adhesives and Sealants (Adopted 6/8/93)  
 Rule 75 Circumvention (Adopted 11/27/78)  
 Appendix IV-A Soap Bubble Tests (Adopted 12/86)  
 Rule 100 Analytical Methods (Adopted 7/18/72)  
 Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)  
 Rule 102 Source Tests (Adopted 11/21/78)  
 Rule 103 Stack Monitoring (Adopted 6/4/91)  
 Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)  
 Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)  
 Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)

Rule 158 Source Abatement Plans (Adopted 9/17/91)  
 Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)  
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[FR Doc. 94-8737 Filed 4-11-94; 8:45 am]  
 BILLING CODE 6560-50-F

#### 40 CFR Part 271

[FRL-4856-2]

#### Texas: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

**SUMMARY:** The State of Texas has applied for final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), and the Environmental Protection Agency (EPA) has reviewed Texas' application and decided that its hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period provided for public participation in this process, EPA intends to approve Texas' hazardous waste program revision, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984. Texas' application for the program revision is available for public review and comment.

**DATES:** This final authorization for Texas shall be effective June 27, 1994, unless EPA publishes a prior Federal Register (FR) action withdrawing this immediate final rule. All comments on Texas' program revision application must be received by the close of business May 27, 1994.

**ADDRESSES:** Copies of the Texas program revision application and the materials which EPA used in evaluating the revision are available from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses for inspection and copying: Texas Natural Resource Conservation Commission, 1700 N. Congress Avenue, Austin, TX 78711-3087, and U.S. EPA, Region 6 Library, 12th Floor, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 655-6444. Written comments, referring to Docket Number TX-94-4, should be sent to Dick Thomas, Region 6 Authorization Coordinator, Grants and Authorization Section (6H-HS), RCRA Programs Branch, U.S. EPA Region 6,

First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655-8528.

**FOR FURTHER INFORMATION CONTACT:** Dick Thomas, Region 6 Authorization Coordinator, Grants and Authorization Section (6H-HS), RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655-8528.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act (RCRA or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive interim authorization for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR 260-266, 268, 124, and 270.

##### B. Texas

Texas received final authorization to implement its hazardous waste management program on December 12, 1984, effective December 26, 1984 (see 49 FR 48300). This authorization was clarified in a notice published in the FR on March 26, 1985 (see 50 FR 11858). Texas received final authorization for revisions to its program in notices published in the FR on January 31, 1986, effective October 4, 1985 (see 51 FR 3952), on December 18, 1986, effective February 17, 1987 (see 51 FR 45320), on March 1, 1990, effective March 15, 1990 (see 55 FR 7318), on May 24, 1990, effective July 23, 1990 (see 55 FR 21383), on August 22, 1991, effective October 21, 1991 (see 56 FR 41626), and on October 5, 1992, effective December 4, 1992 (see 57 FR 45719). On December 8, 1992, the Texas



Water Commission (TWC) submitted a final complete program revision application for additional program approvals. (In 1991, Texas Senate Bill 2 created the Texas Natural Resources Conservation Commission (TNRCC) which combined the functions of the former Texas Water Commission and the former Texas Air Control Board. The transfer of functions to the TNRCC from the two agencies became effective on September 1, 1993. Under Chapter 361 of the Texas Health and Safety Code, the TNRCC has sole responsibility for the administration of laws and regulations concerning hazardous waste). Today, Texas is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA reviewed Texas' application, and made an immediate final decision that Texas' hazardous waste program

revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Texas. The public may submit written comments on EPA's final decision until May 27, 1994. Copies of Texas' application for program revision are available for inspection and copying at the locations indicated in the ADDRESSES section of this notice.

Approval of Texas' program revision shall become effective 75 days from the date this notice is published, unless an adverse written comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse written comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing

a response to the comment that either affirms that the immediate final decision takes effect or reverses the decision.

Texas' program revision application includes State regulatory changes that are equivalent to the rules promulgated in the Federal RCRA implementing regulations in 40 CFR Parts 124, 260-262, 264, 265, and 270 that were published in the FR through June 30, 1991. This proposed approval includes the provisions that are listed in the chart below. This chart also lists the State analogs that are being recognized as equivalent to the appropriate Federal requirements. (As a result of the Texas reorganization presented above, TNRCC rules, once codified at Title 31 Texas Administrative Code, are now codified at Title 30 Texas Administrative Code).

Federal citation	State analog
1. Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038), November 2, 1990 [55 FR 46354], as amended on December 17, 1990 [55 FR 51707]. (Checklists 81 and 81.1). 2. Wood Preserving Listings, December 6, 1990 [55 FR 50450]. (Checklist 82).	Texas Solid Waste Disposal Act (TSWDA), Chapter 361, § 361.003(15), § 361.017 and § 361.024; Texas Health and Safety Code (THSC) Ann. (Vernon Pamphlet 1992), effective September 1, 1991, as amended; Title 31 Texas Administrative Code (TAC) Chapter 335, § 335.1 and § 335.29, both effective March 31, 1992, as amended.
3. Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendments, January 31, 1991 [56 FR 3864]. (Checklist 83).	TSWDA, Chapter 361, § 361.003(15), § 361.017 and § 361.024; THSC Ann., (Vernon Pamphlet 1992), effective September 1, 1991, as amended; Title 30 TAC, Chapter 305, § 305.50(4)(a), effective November 23, 1993; Title 31 TAC Chapter 335, § 335.1 and § 335.29, both effective March 31, 1992, as amended; Title 31 TAC Chapter 335, § 335.1 and § 335.29, both effective September 30, 1992, as amended; and Title 31 TAC Chapter 335, § 335.1, § 335.69(a)(1)(iii), § 335.112(a)(9), § 335.112(a)(20), § 335.152(a)(8), and § 335.152(a)(14), all effective November 23, 1993. TSWDA, Chapter 361, § 361.003(15), § 361.017 and § 361.024; THSC Ann., (Vernon Pamphlet 1992), effective September 1, 1991, as amended; Title 31 TAC, Chapter 335, § 335.1 and § 335.29, both effective March 31, 1992, as amended; Title 31 TAC Chapter 335, § 335.1, effective January 31, 1992 as amended; Title 31 TAC Chapter 335, § 335.29, effective August 31, 1992, as amended; Title 31 TAC Chapter 335, § 335.50(2) and § 335.69(f)(4), both effective November 23, 1993; Title 31 TAC Chapter 335, § 335.152(a)(9)-(a)(12), § 335.111(c), § 335.112(a)(1), and § 335.112 (a)(10)-(a)(13), all effective March 31, 1992, as amended; Title 31 TAC Chapter 335, § 335.431, and § 335.431(c), both effective November 23, 1993.
4. Burning of Hazardous Waste in Boilers and Industrial Furnaces, February 21, 1991 [56 FR 7134]. (Checklist 85).	TSWDA Chapter 361, § 361.003(15), § 361.017, and § 361.024; THSC Ann. (Vernon Pamphlet 1992), effective September 1, 1991, as amended; Title 31 TAC, Chapter 335, § 335.1 and § 335.29, both effective March 31, 1992, as amended; Title 31 TAC, Chapter 335, § 335.221(a)(23), effective July 14 1992, as amended; Title 31 TAC, Chapter 335, § 335.1, effective August 22, 1991, as amended; Title 31 TAC, Chapter 305, § 305.50(4), § 305.50(13), § 305.69(h), § 305.571, § 305.572, § 305.573, § 305.51(a)(5), § 305.51(c)(7), and § 335.2(c), all effective July 29, 1992, as amended; Title 31 TAC § 335.1, effective January 31, 1992, as amended; Title 31 TAC § 335.2(j), effective November 23, 1993; Title 31 TAC § 335.6 and § 335.6 (i)(1)-(i)(3), § 335.24(c), § 335.152(a)(5), § 335.152(a)(13), § 335.112(a)(6), § 335.112(a)(14), § 335.221 (a)(1)-(a)(23), § 335.221(b), § 335.222 (a)-(c), § 335.223 (a)(1)-(a)(8), § 335.223(b), § 335.224 (1)-(2), § 335.224 (3)(A)-(3)(E), § 335.224(4), § 335.224 (5)(A)-(5)(J), § 335.224 (6)-(8), § 335.224 (11)-(14), and § 335.225(a), all effective July 29, 1992, as amended.
5. Removal of Strontium Sulfide from the List of Hazardous Wastes; Technical Amendment, February 25, 1991 [55 FR 7567]. (Checklist 86).	TSWDA, Chapter 361, § 361.003(15), § 361.017 and § 361.024; THSC Ann., (Vernon Pamphlet 1992), effective September 1, 1991, as amended; Title 31 TAC, Chapter 335, § 335.1 and § 335.29, both effective March 31, 1992, as amended.
6. Organic Air Emission Standards for process Vents and Equipment Leaks; Technical Amendment, April 26, 1991 [56 FR 19290]. (Checklist 87).	TSWDA, Chapter 361, § 361.003(15); THSC Ann., (Vernon Pamphlet 1992), effective September 1, 1991, as amended; Title 31 TAC, Chapter 335, § 335.152(a)(1), § 335.152(a)(4), § 335.152(a)(16), and § 335.152(a)(17), all effective August 31, 1992, as amended; Title 31 TAC Chapter 335, § 335.112(a)(1), § 335.112(a)(4), § 335.112(a)(19), and § 335.112(a)(20), all effective August 31, 1992, as amended; Title 31 TAC Chapter 305, § 305.50(4)(A), effective March 31, 1992, as amended.
7. Mining Waste Exclusion III June 13, 1991 [56 FR 27300]. (Checklist 90).	TSWDA, Chapter 361, § 361.003(15), § 361.017, and § 361.024; THSC Ann., (Vernon Pamphlet 1992), effective September 1, 1991, as amended; Title 31 TAC, Chapter 335, § 335.1 and § 335.29, both effective March 31, 1992, as amended.



Texas is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

### C. Decision

I conclude that Texas' application for a program revision meets the statutory and regulatory requirements established by RCRA. Accordingly, Texas is granted final authorization to operate its hazardous waste program as revised.

Texas now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Texas also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA, and to take enforcement actions under Sections 3008, 3013 and 7003 of RCRA.

### D. Codification in Part 272

EPA uses 40 CFR 272 for codification of the decision to authorize Texas' program and for incorporation by reference of those provisions of Texas' statutes and regulations that EPA will enforce under Section 3008, 3013, and 7003 of RCRA. Therefore, EPA is reserving amendment of 40 CFR 272, Subpart E, until a later date.

### Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Texas' program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

### List of Subjects in 40 CFR Part 271

Environmental protection,  
Administrative practice and procedure,  
Confidential business information,  
Hazardous materials transportation,  
Hazardous waste, Indian lands,  
Intergovernmental relations, Penalties,  
Reporting and recordkeeping

requirements, Water pollution control, Water supply.

**Authority:** This rule is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(A), 6926, 6974(b).

**Dated:** March 21, 1994.

**Joe D. Winkle,**

*Acting Regional Administrator.*

[FR Doc. 94-8735 Filed 4-11-94; 8:45 am]

**BILLING CODE 6560-60-P**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

#### 49 CFR Part 190, 192, 193, and 195

**RIN 2137-AB71**

[Docket No. PS-126; Amdts. 190-5, 192-72, 193-9, 195-50]

#### Passage of Instrumented Internal Inspection Devices

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the gas, hazardous liquid and carbon dioxide pipeline safety regulations to require that certain new and replacement pipelines be designed and constructed to accommodate the passage of instrumented internal inspection devices (smart pigs). This action was taken in response to a mandate in the Pipeline Safety Reauthorization Act of 1988. The intended effect of these amended regulations is to improve the safety of gas, hazardous liquid and carbon dioxide pipelines by permitting their inspection by "smart pigs" using the latest technology for detecting and recording abnormalities in the pipe wall.

**EFFECTIVE DATE:** The effective date of this final rule is May 12, 1994.

**FOR FURTHER INFORMATION CONTACT:** Albert C. Garnett, (202) 366-2036 regarding the subject matter of this amendment or the Docket Unit, (202) 366-5046 regarding copies of this amendment or other material in the docket.

#### SUPPLEMENTARY INFORMATION:

##### Notice of Proposed Rulemaking

RSPA published a Notice of Proposed Rulemaking (NPRM) on November 20, 1992 (57 FR 54745) proposing that new and replacement gas transmission lines and new and replacement hazardous liquid pipelines and carbon dioxide pipelines be designed and constructed

to accommodate the passage of instrumented internal inspection devices. However, the rules would not apply to specific installations for which such design and construction would be impracticable. In addition, the NPRM proposed a procedure for operators seeking an administrative ruling on any rule in parts 192, 193 and 195 in which the administrator is authorized to make a finding or approval.

The NPRM was issued in response to Congressional mandates in sections 108(b) and 207(b) of the Pipeline Safety Reauthorization Act of 1988 (hereinafter "Reauthorization Act") (Pub. L. 100-561; Oct. 31, 1988). Section 108(b) of the Reauthorization Act amended section 3 of the Natural Gas Pipeline Safety Act of 1968 (NGPSA) by adding subsection (g), "Instrumented Internal Inspection Devices" (49 app. U.S.C. 1672). This new subsection requires the Secretary of Transportation to establish regulations requiring that:

(1) The design and construction of new [gas] transmission facilities, and (2) when replacement of existing transmission facilities or equipment is required, the replacement of such existing facilities, be carried out, to the extent practicable, in a manner so as to accommodate the passage through such transmission facilities of instrumented internal inspection devices (commonly referred to as "smart pigs").

Section 207(b) of the Reauthorization Act amended section 203 of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPESA) (49 app. U.S.C. 2002) to require that DOT establish similar regulations with respect to pipeline facilities subject to the HLPESA.

#### Future Rulemaking Involving Smart Pigs

The Pipeline Safety Act of 1992 (hereinafter "PLSA of 1992") (Pub. L. 102-508; Oct. 24, 1992) in sections 103 and 203 amended the NGPSA and the HLPESA, respectively, by requiring the Secretary of Transportation to issue regulations that require the periodic inspection of gas transmission facilities and hazardous liquid pipelines in high-density population areas, and hazardous liquid pipelines in environmentally sensitive areas or crossing navigable waterways. In response to these mandates, RSPA will issue an NPRM proposing to prescribe the circumstances, if any, under which such inspections would be conducted with smart pigs. In those circumstances under which an inspection by a smart pig would not be required, RSPA is mandated to require the use of an inspection method that is at least as effective as the use of smart pigs in providing for the safety of the pipeline.



## Regulations

In the NPRM, RSPA proposed to require all future new and replacement gas transmission lines subject to 49 CFR part 192 and hazardous liquid and carbon dioxide pipelines subject to 49 CFR part 195 to be designed and constructed to accommodate the passage of smart pigs, except where impracticable. For the purposes of this rulemaking, RSPA proposed that it would be impracticable to require the accommodation of smart pigs under the following categories of piping: Manifolds, station piping (such as compressor stations, pump stations, metering stations or regulator stations), cross-overs, and fittings providing branch line junctures (such as tees and other lateral connections). Additionally, the NPRM proposed to allow pipeline operators to petition (minimum 90 days in advance) the Administrator, in a particular case, for a finding that design or construction to accommodate a smart pig would be impracticable.

### Advisory Committees

The Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) have been established by statute to evaluate pipeline safety regulations. The TPSSC and the THLPSSC met in joint session in Washington, DC on August 3, 1993, and considered the NPRM. Both committees accepted the NPRM as feasible, reasonable, and practicable with the incorporation of several changes. RSPA's disposition of the advisory committees' recommendations are discussed below.

### Discussion of Comments

RSPA received public comments on the proposed rule change from 48 pipeline operators, seven pipeline-related associations, three state/Federal agencies, and one consulting engineer. The following discussion explains how RSPA considered the advisory committees' positions and the public comments on the proposed regulations in developing the final rule.

#### Low Stress Pipelines

Twenty-three commenters indicated that the rule should except pipelines in which the internal operating pressure results in low stress in the pipe wall. Many commenters argued that since gas transmission lines are not subject to certain pipeline safety regulations (§§ 192.609, 192.711 & 192.713) if they operate at or below 40 percent of the specified minimum yield strength (SMYS), that this rule should similarly not apply to these same transmission

lines. The TPSSC also recommended that piping operating at a stress level of 40 percent of SMYS or less be excepted.

While RSPA understands this position, it does not agree that it justifies exception of gas transmission lines based solely on their low hoop stress at maximum operating pressure. Pipelines operating at lower stress levels are as susceptible to corrosion and other types of damage, identifiable by smart pigs, as pipelines operating at higher stress. In addition, the Reauthorization Act mandate to require certain new and replacement pipelines to be designed and constructed to accommodate the passage of smart pigs limits RSPA's discretion only to situations that make such design and construction impracticable. RSPA finds that an exception from the requirements adopted in this rule for pipelines operating at or below 40% SMYS is not appropriate, because the pipe wall stress does not, within the terms of the Reauthorization Act, affect the practicability of designing and constructing a line to accommodate passage of smart pigs.

#### Short Lengths

Eighteen commenters recommended that the rule except new or replacement pipelines based on their short lengths. Some commenters recommended excepting replacement pipelines depending on whether the adjoining portions of the pipeline are piggable. One of these commenters reasoned that unless the adjoining portion of pipeline can accommodate the passage of instrumented internal inspection devices, there can be no added benefit from making a replacement section piggable because the pipeline overall will still contain restrictions prohibiting inspection by smart pigs.

Nine commenters recommended exception of minimum lengths that ranged from 2000 feet to 5 miles. A gas transmission line operator recommended that the minimum excepted length should be the distance between compressor stations (40 to 60 miles), to exclude the necessity to replace non-full opening valves on short replacement sections. Four commenters suggested that the minimum excepted length should be determined by RSPA.

The disparity of the commenters' recommendations illustrates that there is no generally accepted rationale for determining the minimum length, if any, of pipe that should be excepted. Moreover, RSPA does not agree that the rule should except replacement pipelines based on either the length of the replaced section of pipeline or on whether the adjoining portion of

pipeline can accommodate passage of instrumented internal inspection devices.

The plain objective of the statutory mandate is to make both short and long pipelines that are not now piggable from end to end, piggable in time through replacements. Therefore, the final rule does not include these exceptions. However, operators wishing to except short length pipelines may want to petition the Administrator under the procedures set out in the new § 190.9.

#### Non-Steel Pipelines

Five commenters recommended that the rule apply only to steel pipelines. One commenter argued that current internal inspection devices cannot monitor non-ferrous pipelines for stress corrosion. The commenter contends that no benefit derives from the running of smart pigs on these lines, and therefore it would be unreasonable to require operators to make them piggable.

Another commenter contended that, although some polyethylene gas pipelines are by DOT definition transmission lines, there are no smart pigs (except camera pigs) that are designed for use in plastic pipe.

RSPA does not agree that the rule should except non-steel pipelines. It is true that smart pigs cannot presently monitor non-steel pipelines for as many defects or anomalies as are detectable in steel pipelines. However, smart pigs can currently detect some physical defects in non-steel pipelines; i.e. dents, change in internal diameter, ovality, misalignment of joints, and change in position of the pipe. Moreover, by making new and replacement plastic pipelines piggable, they will be able to accommodate new smart pig technology as it is developed. Nonetheless, all the exceptions in this rule applicable to steel pipelines are also applicable to non-steel pipelines.

#### Small Diameter Pipelines

Twenty-four commenters recommended that the rule except the smaller diameter pipelines. Some reasoned that commercially available smart pig technology is limited to the larger pipe sizes. Consequently, for those sizes of pipe for which there are no commercially available smart pigs, designing and constructing pipelines to pass smart pigs would be impracticable.

RSPA does not agree that the rule should include a blanket exception for all small diameter pipelines. In recent years we have seen the increasing miniaturization of electro-mechanical components in equipment used in smart pigs and we expect the trend to continue.



RSPA understands that where no commercially available technology exists to inspect a particular pipe size by smart pigs, the pipeline operator would lack sufficient technical information to establish the design and construction criteria, e.g. minimum internal pipe diameter and minimum pipe bend radius, essential for passage of smart pigs. Therefore, the final rule has been written to apply only to pipeline diameters for which there is a commercially available smart pig at the time the new or replacement pipeline is designed. At the time of preparation of this document, RSPA finds that 4 inches is the minimum nominal pipe size for which smart pigs are commercially available.

#### *Gas Transmission Lines Operated in Conjunction With Distribution Systems*

Twelve commenters recommended that the rule except lines classified as transmission lines because their hoop stress is 20 percent or more of SMYS, that operate in conjunction with gas distribution systems. They reasoned that, typically, these lines have components and configurations that impede passage of instrumented internal inspection devices.

Some commenters reasoned that many of these transmission lines are the sole gas supply to large gas distribution systems. So, inspection of these lines by instrumented internal inspection devices could, if problems develop while running the inspection device, disrupt customer service.

RSPA does not agree that the rule should provide an exception for gas transmission lines that are operated in conjunction with distribution systems (except as discussed under the heading "Gas transmission lines in crowded underground locations"). First, although such lines may have configurations or components that impede inspection by smart pigs, the commenters did not provide information to substantiate the contention that these conditions are impracticable to avoid on new or replacement lines. RSPA believes it is practicable to design and construct new and replacement transmission lines operated in conjunction with distribution systems to accommodate passage of smart pigs. Second, potential service disruption (from stuck smart pigs) on single feed transmission lines will not be a factor on lines that are properly designed, constructed and maintained to accommodate smart pigs. Also, to further reduce the possibility of the smart pig becoming stuck, prior runs can be scheduled, with cleaning and caliper pigs, during periods of minimal load requirements. Third, the use of

smart pigs to monitor the integrity of single feed transmission lines can detect problems before they can affect the reliability of the gas supply to the customers.

#### *Gas Transmission Lines in Crowded Underground Locations*

Twelve commenters recommended that RSPA except gas transmission lines located in certain urban areas. Most of them pointed out that utility locations underneath city streets in downtown urban areas are typically overcrowded. Physical constraints from other utilities and the structural boundary of available space make the design and construction of replacement pipelines to accommodate smart pigs impracticable. For example, many underground utility locations lack sufficient clearance between existing utilities to allow the replacement of existing short radius elbows with longer radius elbows (which consume more space) to permit passage of smart pigs. Nonetheless, a commenter from a state with few large cities suggested that internal inspection devices should only be required for pipelines located in Class 3 or 4 locations and in environmentally sensitive areas.

While gas transmission lines operated in conjunction with distribution systems are generally covered under this rule, RSPA agrees that the rule should provide an exception whenever gas transmission lines operated in conjunction with distribution systems are located in certain congested urban areas. RSPA believes it is impracticable to design and construct these particular transmission lines, considering the arguments presented above, to accommodate passage of smart pigs when there exist physical constraints, not associated with the pipe itself, which are beyond an operator's control. Furthermore, RSPA understands that underground utility areas in Class 4 locations are typically overcrowded and unable to accommodate the pipeline configurations needed for the accommodation of smart pigs. So, in the final rule, § 192.150(b)(6) excepts gas transmission lines that are: Operated in conjunction with a gas distribution system and installed in Class 4 locations. However, gas transmission lines, not operated in conjunction with a gas distribution system are not excepted because these lines generally pose greater risks, typically transporting gas at higher pressures.

#### *Gas, Oil and Carbon Dioxide Storage Facilities*

Twelve commenters recommended that the rule except gas transmission

lines which are part of injection/withdrawal systems at gas storage facilities. Commenters said these gas storage facilities have small diameter piping configured in a grid-like pattern that would not permit the passage of smart pigs. The TPSSC likewise recommended that storage facilities be excepted. Similarly, one commenter urged an exception of delivery/withdrawal piping associated with hazardous liquid storage in breakout tanks, due to the short lengths, short radius bends and other tank farm piping configurations which are unable to accommodate the passage of smart pigs. The THLPSSC also recommended that tank farm piping be excepted from compliance with this rule.

RSPA agrees that because of piping configuration constraints associated with the storage facilities for gas, hazardous liquids and carbon dioxide it is generally impracticable for design and construction to accommodate passage of smart pigs. Therefore, § 192.150(b)(3) of the rule excepts piping associated with gas storage facilities, other than a continuous run of transmission line between a compression station and storage facilities, and § 195.120(b)(2) excepts piping associated with liquid storage facilities. Nonetheless, RSPA will be studying underground storage issues and, based on that work, may initiate rulemaking to address new safety measures that may be necessary.

#### *Emergencies and Unforeseen Construction Problems*

The NPRM proposed to exclude from the rule piping that the Administrator finds, upon petition by an operator, to be impracticable to design and construct to accommodate the passage of smart pigs. Eighteen commenters stated that many construction situations are under tight contractual or other time constraints that do not allow sufficient time to obtain a finding by the Administrator. For example, an operator may have to make immediate adjustments in the field because of the discovery of obstructions or other unforeseen problems. Thus, some commenters reasoned that while the Administrator would have at least 90 days to decide whether to grant a petition, most pipeline construction projects would not allow delays of a few days. A few commenters suggested that the operators should be permitted to accept the "burden of proof" when encountering an impracticability during construction and so inform RSPA.

Similarly, the TPSSC recommended that the test for impracticability be left up to the operator instead of petitioning the Administrator for a finding. The



Committee suggested the wording "and any other piping that the operator determines and documents would be impracticable to design and construct to accommodate the passage of an instrumented internal inspection device" be substituted for "the Administrator finds" in the exception of § 192.150(b) from the NPRM. Also, the TPSSC recommended that "emergency repairs" be added to the list of exceptions contained in § 192.150(b).

RSPA acknowledges that emergencies, construction time constraints, and unforeseen pipeline construction problems would not allow operators the time to petition for a finding of impracticability and wait for RSPA's response. Therefore, RSPA has added §§ 192.150(c) and 195.120(c) which permit an operator discovering an emergency, construction time constraint or other unforeseeable construction problem to make a provisional determination of impracticability. In such instances the operator must document the circumstances resulting in its impracticability determination. Within 30 days after discovering an emergency or a construction problem, the operator must petition under the new § 190.9, "Petitions for finding or approval" for a finding by the Administrator that design and construction to accommodate passage of internal inspection devices would be impracticable. If the petition is denied, the operator must modify the line section to allow passage of instrumented internal inspection devices, within 1 year after the date of the notice of denial.

#### *Petitions for Finding or Approval*

The NPRM proposed that § 190.9, "Petitions for finding or approval" be added to part 190 of this Chapter. Except as discussed above, commenters did not oppose the establishment of a procedure to allow an operator to petition the Administrator for an administrative ruling on any rule under parts 192, 193, and 195 in which the Administrator is authorized to make a finding or approval. Heretofore, a similar procedure in part 193 (§ 193.2015) applied only to petitions relating to LNG facilities.

In this rule, the § 190.9 has been revised to require operators of intrastate pipelines located in states, participating under section 5 of the NGPSA or section 205 of the HLPSSA to direct their petitions to the state pipeline safety agency. The participating state agency will then make a recommendation to the Administrator as to the disposition of the petition.

#### *Restraining Elements*

Nine commenters objected to the proposed requirement to add restraining devices to all fittings providing branch line connections. Restraining elements are added when the outlet to the branch line could impede the passage of the smart pig. Many commenters argued that the addition of restraining elements to these fittings may inhibit cleaning of the branch lines by spheres or cleaning pigs. Other commenters pointed out that the use of restraining elements in the main line is unnecessary whenever the branch line has a significantly smaller diameter than the main line.

RSPA agrees that the rule should not require restraining elements where they are unnecessary or make impracticable other functions that are an essential and routine part of pipeline operations and maintenance. So, the rule does not include a requirement for installing restraining elements, but leaves their installation to the discretion of the operator.

#### *Offshore Pipelines*

Eleven commenters recommended that the rule except offshore pipelines. Several commenters based their recommendations on the fact that offshore pipeline networks are tied-in by "hot-tapped" or tee connections and these tie-ins are without restraining elements. This type of construction permits cleaning pigs or spheres, required for removal of materials (such as liquids from gas lines and wax from oil lines) that impede normal flow, to pass into laterals of ever increasing diameters.

The system design is contingent on the passage of these cleaning devices through the various laterals for final tie-in to the liquid trunk (main) lines and to the gas transmission lines. Then, these larger diameter lines transport the cleaning pigs to onshore facilities, for eventual retrieval.

An operator of offshore gas systems said that because of the many subsea tie-ins to pipelines of larger diameter, smart pigs will require some type of elaborate receiving device or physically disconnecting/lifting the pipeline; either of which would be very expensive. Other commenters advised that smart pigs cannot be launched or received subsea. An offshore operator said that new offshore platforms typically connect new platforms to an existing subsea network. Connections to an existing subsea pipeline are "hot-tapped" or are extensions to existing laterals. This operator summed up his recommendations by saying that it is impractical to design for the passage of

smart pigs through these connections and it is certainly impractical to install subsea traps.

Commenters also stated that because of space limitations on the offshore platforms, the pipelines (risers) which have been routed up onto the platforms have been designed and constructed with short radius bends and other fittings that are only adequate for the launching of cleaning pigs or spheres. These commenters argue that the construction of the risers with long-sweeping bends on the sea floor and on the platform, and the installation of the longer launchers and receivers required to accommodate smart pigs, would be impracticable. For many of the same reasons, both the TPSSC and the THLPSSC recommended that offshore pipelines be excepted from the rule.

RSPA acknowledges that many subsea pipelines have been designed and constructed without restraining bars on branch line connections, because they would prohibit the passage of cleaning pigs and spheres. This design allows cleaning pigs and spheres to pass through the network of subsea laterals and ultimately into larger transmission or trunk (main) lines that transport gas or liquids to shore facilities.

It is also apparent to RSPA, that designers of offshore platforms seldom anticipated the space required to accommodate facilities necessary for the operation of smart pigs. Moreover, RSPA accepts that smart pigs cannot be launched or received subsea. However, RSPA does not agree with the commenters or the two advisory committees that all gas and liquid offshore pipelines should be fully excepted from this rule.

For pipelines subject to part 195, the current § 195.120 requires that each component of a main line system, other than manifolds, that change direction within the pipeline system must have a radius of turn that readily allows the passage of pipeline scrapers, spheres, and internal inspection equipment. This requirement for main line components to readily allow the passage of smart pigs through changes of direction has been in effect since 1970, when offshore liquid lines became subject to part 195.

Part 192 has applied to offshore gas lines since 1971. In accordance with the requirements of section 108(b) of the Reauthorization Act, RSPA sees the need for certain new and replacement offshore gas transmission lines and risers from these lines to be designed and constructed to allow passage of smart pigs.

Accordingly, in §§ 192.150(b)(7) and 195.120(b)(6), while the rule has not excepted all offshore lines and related



facilities, it has excepted offshore lines which are not gas transmission lines or liquid main lines 10 inches or greater in nominal diameter that transport these commodities to onshore facilities. RSPA limited the accommodation of smart pigs to these larger gas transmission and liquid main lines because we find, for the reasons expressed by the commenters, that the unique design and construction of the excepted offshore pipeline systems makes them generally impracticable for the passage of smart pigs.

When the rulemaking mandated by the PLSA of 1992 discussed under the heading—Future Rulemaking Involving Smart Pigs—is issued, RSPA may prescribe the circumstances for inspection with smart pigs. Such circumstances, if included in any final rule, may require the need for offshore platforms that contain risers, to also accommodate launchers and (where appropriate) receivers for the passage of smart pigs.

#### *Above Ground Pipelines*

Three commenters recommended that RSPA except above ground pipelines because operators can inspect these pipelines visually.

RSPA finds that regardless of whether an operator can visually inspect a line above ground is irrelevant to the practicability of design and construction of pipelines to accommodate passage of smart pigs. Furthermore, smart pigs are capable of detecting internal defects that cannot be discovered by a visual inspection of the outside surface of a pipeline. Moreover, above ground pipelines are required to be externally coated and coating materials usually preclude visual inspection of the outside surface. So, this recommendation was not adopted.

#### *Clarification of the Term "Replacement"*

Thirteen commenters recommended that the terms "replacement transmission line" and "replacement pipeline" be clarified to indicate the portion of an existing line that must be modified to accommodate smart pigs when replacements are made for other reasons.

A gas pipeline operator recommended that the meaning of the term "replacement transmission line" be limited to the pipe and components such as valves, bends, and fittings which are added to or replaced in an existing transmission line. Another gas pipeline operator expressed support for regulations stating that replacement pipeline facilities could not be constructed which would further

restrict the passage of a smart pig. RSPA cannot accept the first commenter's recommendations because if "replacement" is limited to a replaced valve, a joint of pipe, or other component, then pipelines with restrictive components, such as elbows and tight radius field bends (which when properly maintained never need replacement) would never be piggable. Also RSPA cannot accept the second commenter's position because it appears to mean that the operator need only to make the replacement no more restrictive than it was prior to it being replaced. The clear intent of the congressional mandate is to improve an existing pipeline's piggability.

A pipeline operator and a pipeline related association, recommended that the word "pipeline" be replaced with "line section" defined in § 195.2. A gas pipeline association urged that "replacement transmission line" be changed to "replacement transmission section" to clearly indicate that only the portion of line replaced must accommodate the passage of smart pigs. Another pipeline related association interpreted "replacement" to mean either: (1) Replacement of the entire line, or (2) replacement of the line segment between two logical points (e.g. compressor stations). A gas pipeline operator also believed the term "segment" is appropriate because it is frequently used in part 192 and it recognizes that pipelines are segmented for different regulatory purposes. A gas transmission operator felt that the definition of "replacement line" should exempt the replacement of partial segments of existing gas pipelines within a valve section that are replaced because of class change or regular maintenance work because of construction restraints. A gas distribution operator stated that if the proposal was intended to apply to the replaced or relocated section only, then that limitation should be in the final rule.

The Congressional mandate requires the gradual elimination of restrictions in existing gas transmission lines and existing hazardous liquid and carbon dioxide lines in a manner that will eventually make the lines piggable. Operators are only required to remove the restrictions when replacements are made on the pipeline. On those occasions, the economic burden of the upgrading is reduced because crews and equipment will be on the site and that portion of the pipeline will need to be out of service. Six of the commenters appear to have considered the favorable economics when they recommended that the upgrading for piggability cover

the "line segment" or "line section". While "line segment" is frequently used in the gas regulations it is not defined, although it's used similarly to "line section" (one commenter suggested it was the distance between two logical points e.g. compressor stations).

Therefore, in consideration of the comments "line section" is used in place of the term "replacement transmission line" in part 192, and "line section" is used in place of the term "replacement pipeline" in part 195, as those terms are used in the NPRM. "Line section," as added to part 192 is similar to "line section" as it is defined in § 195.2.

In part 195, "line section" is currently defined in § 195.2 to mean a continuous run of pipe between adjacent pressure pump stations, between a pressure pump station and terminal or breakout tanks, between a pressure pump station and a block valve, or between adjacent block valves. Now, in part 192 "line section" is defined in § 192.3 to mean a continuous run of transmission line between adjacent compressor stations, between a compressor station and storage facilities, between a compressor station and a block valve, or between adjacent block valves.

Accordingly, §§ 192.150(a) and 195.120(a) have been revised to clarify that when a replacement is made of line pipe, line valve, line fitting, or other line component in an existing pipeline, covered by this rule, the complete line section must be made to accommodate smart pigs.

Also, RSPA has modified the final rule in response to the comment from the gas transmission operator that felt replacements of certain partial segments within an existing valve section that are replaced because of MAOP class change or regular maintenance work requirements, should be excepted because of construction constraints. Although, the construction restraints were not specified, RSPA has addressed construction type problems with the procedure set out in §§ 192.150(c) and 195.120(c).

#### *Launchers and Receivers*

Several commenters agreed with statements in the NPRM that installation of pig traps should not be required by this rulemaking, but should be left to the discretion of pipeline operators. Also, a commenter agreed with the statement in the NPRM that operators should determine where pig traps are to be permanently located based on individual operating circumstances. A gas pipeline operator said that in a practical sense, it would be more cost effective to add launchers and receivers



at the time of construction rather than after the transmission line is in service (which could again require the line to be taken out of service). The National Transportation Safety Board urged RSPA to revise its proposal so that facilities for entering and removing smart pigs are required on all pipelines capable of being traversed by such equipment. However, RSPA believes that revising the NPRM for this purpose would delay the regulatory effect of this rulemaking and the requirement may be included in a future rulemaking.

In the final rule, as in the NPRM, RSPA has not included requirements for launchers or receivers. However, when the rulemaking mandated by the PLSA of 1992 is issued, RSPA may prescribe the circumstances for inspection with smart pigs. Such circumstances, if included in any final rule, may require facilities for launching or receiving smart pigs. In the meantime, RSPA urges pipeline operators to consider the economic advantages of voluntarily installing facilities, at the time of construction or replacement of pipelines, for launching and receiving smart pigs.

#### *Exemption of Gathering Lines*

Several commenters urged clarification of the exception for gas gathering lines in the proposed § 192.9.

In light of the comments, RSPA agrees that clarification is needed. Therefore, the exception, of the new § 192.150, has been retained and the current exception, as provided in § 192.1, has been referenced in the revised § 192.9.

Moreover, in §§ 192.150(b)(7) and 195.120(b)(6), RSPA has excepted offshore pipelines other than gas transmission or liquid main lines, 10 inches or larger, that transport gas or liquids to onshore facilities. Liquid gathering lines, which are defined in § 195.2, are included in this exception.

#### *Economic Impact*

Nineteen commenters discussed the economic impact and the majority found fault with RSPA's assessment that the rule would add minimally to the average expense of pipeline design and construction.

As a result of information presented by the commenters, RSPA has excepted various categories of pipelines from the final rule. These exceptions are: Piping associated with storage facilities, other than gas transmission lines; piping sizes for which a smart pig is not commercially available; gas transmission lines, operated in conjunction with a distribution system, which are installed in Class 4 locations; and offshore pipelines other than

certain gas transmission and liquid main lines. Additionally, operators are permitted to make a provisional determination of impracticability in instances of emergencies, construction time constraints or other unforeseeable construction problems that require immediate action. Other less urgent problems can be handled through the newly established procedure in § 190.9, "Petitions for finding or approval."

Accordingly, these exceptions together with others carried forward from the NPRM substantially reduce the cost of compliance with the rule. RSPA finds that the compliance costs will be minimal. A Regulatory Evaluation has been prepared and is available in the Docket.

#### *Regulatory Notices and Analyses*

##### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule is not considered a significant regulatory action under 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

RSPA believes that the rule will add minimally to the average expense of pipeline design and construction. The information RSPA has collected for the study under section 304 of the Reauthorization Act shows that about 90 percent of hazardous liquid pipelines and 60 percent of gas transmission lines have been constructed to accommodate the passage of smart pigs. This information confirms RSPA's field experience that most operators are now constructing new and replacement gas transmission lines and hazardous liquid pipelines to accommodate smart pigs.

RSPA lacks detailed information about carbon dioxide pipelines which recently became subject to part 195. However, there are only about 10 such pipeline systems and we understand that they are not expected to grow in mileage or to require a significant amount of replacement in the near term. Thus, those pipelines should not be greatly affected by the revision of § 195.120.

#### *Federalism Assessment*

This final rule will not have substantial direct effects on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612

(52 FR 41685; October 30, 1987), RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

#### *Regulatory Flexibility Act*

There are very few small entities that operate pipelines affected by this rulemaking. To the extent that any small entity is affected, the regulatory evaluation accompanying this rule shows that the costs are minimal. Based on these facts, I certify that under section 605 of the Regulatory Flexibility Act that this final regulation does not have a significant impact on a substantial number of small entities.

#### *List of Subjects*

##### *49 CFR Part 190*

Administrative practice and procedure, Penalties, Pipeline safety.

##### *49 CFR Part 192*

Pipeline safety, Reporting and recordkeeping requirements.

##### *49 CFR Part 193*

Fire prevention, Pipeline safety, Reporting and recordkeeping requirements, Security measures.

##### *49 CFR Part 195*

Anhydrous Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements, Security measures.

In consideration of the foregoing, RSPA amends 49 CFR parts 190, 192, 193, and 195 as follows:

#### **PART 190—[AMENDED]**

1. The authority citation for part 190 continues to read as follows:

**Authority:** 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1681, 1804, 2002, 2006, 2007, 2008, 2009, and 2010; 49 CFR 1.53.

2. Section 190.9 is added to read as follows:

##### **§ 190.9 Petitions for finding or approval.**

(a) In circumstances where a rule contained in parts 192, 193 and 195 of this chapter authorizes the Administrator to make a finding or approval, an operator may petition the Administrator for such a finding or approval.

(b) Each petition must refer to the rule authorizing the action sought and contain information or arguments that justify the action. Unless otherwise specified, no public proceeding is held on a petition before it is granted or denied. After a petition is received, the Administrator or participating state agency notifies the petitioner of the



disposition of the petition or, if the request requires more extensive consideration or additional information or comments are requested and delay is expected, of the date by which action will be taken.

(1) For operators seeking a finding or approval involving intrastate pipeline transportation, petitions must be sent to: (i) The state agency certified to participate under section 5 of the NGPSA (49 U.S.C. 1674) or section 205 of the HLPFA (49 App. U.S.C. 2004); or (ii) Where there is no state agency certified to participate, the Administrator, Research and Special Programs Administration, 400 7th Street SW., Washington, DC 20590.

(2) For operators seeking a finding or approval involving interstate pipeline transportation, petitions must be sent to the Administrator, Research and Special Programs Administration, 400 7th Street SW., Washington, DC 20590.

(c) All petitions must be received at least 90 days prior to the date by which the operator requests the finding or approval to be made.

(d) The Administrator will make all findings or approvals of petitions initiated under this section. A participating state agency receiving petitions initiated under this section shall provide the Administrator a written recommendation as to the disposition of any petition received by them. Where the Administrator does not reverse or modify a recommendation made by a state agency within 10 business days of its receipt, the recommended disposition shall constitute the Administrator's decision on the petition.

#### PART 192—[AMENDED]

3. The authority citation for part 192 continues to read as follows:

**Authority:** 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

4. In § 192.3, the definition of *Secretary* is removed, and definitions of *Administrator* and *Line section* are added to read as follows:

##### § 192.3 Definitions

*Administrator* means the Administrator of the Research and Special Programs Administration or any person to whom authority in the matter concerned has been delegated by the Secretary of Transportation.

*Line section* means a continuous run of transmission line between adjacent compressor stations, between a compressor station and storage facilities, between a compressor station and a

block valve, or between adjacent block valves.

5. Section 192.9 is revised to read as follows:

##### § 192.9 Gathering lines.

Except as provided in §§ 192.1 and 192.150, each operator of a gathering line must comply with the requirements of this part applicable to transmission lines.

6. Section 192.150 is added to read as follows:

##### § 192.150 Passage of internal inspection devices.

(a) Except as provided in paragraphs (b) and (c) of this section, each new transmission line and each line section of a transmission line where the line pipe, valve, fitting, or other line component is replaced must be designed and constructed to accommodate the passage of instrumented internal inspection devices.

(b) This section does not apply to: (1) Manifolds;

(2) Station piping such as at compressor stations, meter stations, or regulator stations;

(3) Piping associated with storage facilities, other than a continuous run of transmission line between a compressor station and storage facilities;

(4) Cross-overs;

(5) Sizes of pipe for which an instrumented internal inspection device is not commercially available;

(6) Transmission lines, operated in conjunction with a distribution system which are installed in Class 4 locations;

(7) Offshore pipelines, other than transmission lines 10 inches or greater in nominal diameter, that transport gas to onshore facilities; and

(8) Other piping that, under § 190.9 of this chapter, the Administrator finds in a particular case would be impracticable to design and construct to accommodate the passage of instrumented internal inspection devices.

(c) An operator encountering emergencies, construction time constraints or other unforeseen construction problems need not construct a new or replacement segment of a transmission line to meet paragraph (a) of this section, if the operator determines and documents why an impracticability prohibits compliance with paragraph (a) of this section. Within 30 days after discovering the emergency or construction problem the operator must petition, under § 190.9 of this chapter, for approval that design and construction to accommodate passage of instrumented internal

inspection devices would be impracticable. If the petition is denied, within 1 year after the date of the notice of the denial, the operator must modify that segment to allow passage of instrumented internal inspection devices.

#### PART 193—[AMENDED]

7. The authority citation for part 193 continues to read as follows:

**Authority:** 49 App. U.S.C. 1671 *et seq.*; and 49 CFR 1.53.

##### § 193.2015 [Removed]

8. Section 193.2015 is removed and reserved.

#### PART 195—[AMENDED]

9. The authority citation for part 195 is revised to read as follows:

**Authority:** 49 App. U.S.C. 2002 and 2015; 49 CFR 1.53.

10. In § 195.2, the definition of *Secretary* is removed, and the definition of *Administrator* is added to read as follows:

##### § 195.2 Definitions.

*Administrator* means the Administrator of the Research and Special Programs Administration or any person to whom authority in the matter concerned has been delegated by the Secretary of Transportation.

##### §§ 195.8, 195.56, 195.58, 195.106, 195.260 [Amended]

11. In §§ 195.8, 195.56(a), 195.58, 195.106(e), and 195.260(e), the term "Secretary" is removed and the term "Administrator" is added in its place.

12. Section 195.120 is revised to read as follows:

##### § 195.120 Passage of internal inspection devices.

(a) Except as provided in paragraphs (b) and (c) of this section, each new pipeline and each line section of a pipeline where the line pipe, valve, fitting or other line component is replaced; must be designed and constructed to accommodate the passage of instrumented internal inspection devices.

(b) This section does not apply to: (1) Manifolds;

(2) Station piping such as at pump stations, meter stations, or pressure reducing stations;

(3) Piping associated with tank farms and other storage facilities;

(4) Cross-overs;

(5) Sizes of pipe for which an instrumented internal inspection device is not commercially available;



(6) Offshore pipelines, other than main lines 10 inches or greater in nominal diameter, that transport liquids to onshore facilities; and

(7) Other piping that the Administrator under § 190.9 of this chapter, finds in a particular case would be impracticable to design and construct to accommodate the passage of instrumented internal inspection devices.

(c) An operator encountering emergencies, construction time

constraints and other unforeseen construction problems need not construct a new or replacement segment of a pipeline to meet paragraph (a) of this section, if the operator determines and documents why an impracticability prohibits compliance with paragraph (a) of this section. Within 30 days after discovering the emergency or construction problem the operator must petition, under § 190.9 of this chapter, for approval that design and construction to accommodate passage of

instrumented internal inspection devices would be impracticable. If the petition is denied, within 1 year after the date of the notice of the denial, the operator must modify that segment to allow passage of instrumented internal inspection devices.

Issued in Washington, DC on April 6, 1994.

Ana Sol Gutiérrez,

*Acting Administrator, Research and Special Programs Administration.*

[FR Doc. 94-8622 Filed 4-11-94; 8:45 am]

BILLING CODE 4910-94-P



# Proposed Rules

Federal Register

Vol. 59, No. 70

Tuesday, April 12, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

8 CFR Parts 103, 212, 217, 235, 264 and 286

[INS No. 1603-93]

RIN 1115-AD30

### Charging of Fees for Services at Land Border Ports-of-Entry

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

**SUMMARY:** This rule proposes to amend the regulations to allow the Immigration and Naturalization Service (the Service) to charge a fee for the processing and issuance of specified documents at land border Ports-of-Entry (POEs). Consistent with Federal user fee statutes and regulations, the Service has identified services that are currently provided free of charge and for which it would be appropriate to impose a fee. The revenue generated by the collection of fees for these application processing services will enable the Service to improve service to the public at land border POEs.

**DATES:** Written comments must be submitted on or before June 13, 1994.

**ADDRESSES:** Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5307, Washington, DC 20536. Please include INS number 1603-93 on the mailing envelope to ensure proper and timely handling.

**FOR FURTHER INFORMATION CONTACT:** Linda Loveless, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., room 7228, Washington, DC 20536, telephone (202) 616-7489.

**SUPPLEMENTARY INFORMATION:** Traffic at land border POEs has continued to

increase dramatically in recent years. During FY 1992, Immigration and Customs inspectors at land border ports completed more than 475 million inspections, representing an increase of over 50 million more inspections than were completed in FY 1991. This growth in transborder traffic has made it increasingly difficult to provide expeditious service to the traveling public. Immigration laws require that all applicants-for-admission at land border POEs undergo a brief interview and preliminary screening in a primary vehicle or pedestrian lane. Those found admissible are allowed to proceed without further delay. Persons who do not appear to be immediately admissible, or who require further processing or documentation, are referred for a secondary inspection. Activities directly related to secondary inspection include, among other duties, examining documents, conducting record checks, and issuing permits for extended stays in the United States. Additionally, those submitting applications for benefits, such as border crossing cards and boating permits, often require extensive interviews, as well as record checks, document production, and other time-consuming paperwork.

Currently, appropriated funds are the major source of funding for the staffing of land border POEs. This funding has not kept pace with the increased workload at land border locations. Despite the increase in traffic affecting inspection services, and resulting new construction needed to expand the capacity of many land border POEs, no substantial increase in appropriated fund has been received for land border positions within the last ten years.

The Service has sought to identify those services that are currently provided free of charge for which it would be appropriate to impose a fee. Generation of sufficient revenue to recover the costs of providing specific services, such as document-processing, is consistent with the Federal user fee statute (31 U.S.C. 9701) and regulations which require that recipients of special benefits bear the costs of providing those services. The Office of Management and Budget (OMB) Circular A-25, User Charges, states as a general policy that reasonable charges should be imposed to recover the full cost to the Federal government of

rendering such services. The specific application-processing services provided by the Service in secondary inspection at land border POEs result in the issuance of documents that are beneficial to the specific user. Therefore, it is appropriate that fees be charged to these users.

This rule proposes to permit the Service to impose a fee at land border POEs for the processing of Form I-94, Arrival/Departure Record, and I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form; Form I-444, Mexican Border Visitors Permit; Form I-68, Canadian Border Boat Landing Permit; Form I-175, Application for Nonresident Alien Canadian Border Crossing Card for issuance of Form I-185, Nonresident Alien Canadian Border Crossing Card; and Form I-190, Application for Nonresident Alien Mexican Border Crossing Card, to replace a lost, stolen, or mutilated Nonresident Alien Border Crossing Card, Form I-586.

Prior to development of this proposal, the total cost of providing these specific services to the public was included as part of the total Service budget and was not separately identified. The fees proposed in this rule were determined by an analysis of document-processing services and associated costs, and are calculated to recover the direct and indirect costs to the government of providing these special services and benefits. As the Service collects more detailed information related to providing these specific services, refinements to the cost base may be necessary.

These services and processes include, among other things, interviewing applicants, determining validity of documents, conducting background checks, verifying information, providing assistance to complete application forms, issuing the appropriate documents, and the administrative and support activities associated with providing these services.

The appropriate fee for each application was primarily based on an assessment of the amount of inspector direct labor devoted to processing each type of application. To arrive at this assessment, the Inspections Program obtained work hour information directly from various INS field offices. The estimate derived from this survey was then applied to the estimated volume of



each type of application to determine the total estimated inspector direct labor required for each application. The number of supervisory inspector hours required was determined by applying a standard ratio to the inspector direct labor estimate. Resource levels for training, management, and administrative support were determined based on the current ratio of these functions to the areas to which they normally provide support. The associated costs were calculated based on the level of support that would be required to process each application. Other identifiable costs related to a specific application, such as card production costs, were calculated and applied to the specific application.

With the increase in transborder traffic, the demand for additional resources at land border POEs has become critical. The collection of fees will allow the Service to support the secondary application-processing services provided at land border POEs without depending on appropriated resources. Unlike appropriated funding, fluctuations in fee revenues will correspond directly to fluctuations in workload. Consequently, in the event workload increases, the level of fee resources available to fund the processing of applications would increase commensurately. It is anticipated that the imposition of the fee-for-service charge will enable the Service to improve inspection services at the land border. Once the fee revenues are available, appropriated resources formerly allocated to provide these services may be redirected to augment staffing of vehicle and pedestrian traffic lanes. The resulting benefit would be improved facilitation of traffic through the POE.

The specific forms for which fees are being proposed are as follows:

Forms I-94 and I-94W are issued to record the entry of many nonimmigrant aliens and serve as a form of alien registration. These forms document the benefits of admission and permit the alien to travel anywhere within the United States for a designated purpose and period of time. Payment of a fee will not be required when an I-94 is issued for the purpose of paroling an alien into the United States.

Form I-44 is issued in conjunction with presentation of a Nonresident Alien Border Crossing Card (BCC) or nonimmigrant visitor's visa by a Mexican national requesting entry as a visitor for business or pleasure (B-1/B-2). This form is issued in lieu of, and serves a similar purpose to, Form I-94, and is issued only to Mexican nationals when they are traveling to the five-

border-state area of Arizona, California, Nevada, New Mexico, or Texas for a period not to exceed 30 days. Current procedure allows the inclusion of several persons on one Form I-44. The proposed regulation will require a separate form with fee for each individual; however, there is a family fee cap applicable to a husband, wife, and minor children under 18 years of age.

Form I-68 may be issued to eligible United States and Canadian citizens and residents to allow pleasure boaters, who have been previously inspected and issued the form, to enter the United States by small boat from Canada without the necessity of reporting for inspection upon each entry. Considerable personnel resources and work hours are spent each year in its issuance, including record checks and INS outreach activities at boat shows, recreational clubs, and other similar gatherings to facilitate registration in the program. This rule also provides for the issuance of a Form I-68 for each individual, rather than for each family group, although a family fee cap is applicable to a husband, wife, and minor children under 18 years of age.

Form I-185 (CBCC) is issued to Canadian citizens or lawful permanent residents of Canada having a common nationality with Canada and is intended to facilitate the entry of those individuals into the United States. Since these groups are automatically waived passport and visa requirements when crossing the border into the United States, Form I-185 is normally issued in conjunction with an approved waiver of excludability pursuant to section 212(d)(3)(B) of the Act. Form I-185 therefore serves as evidence of a long-term waiver of inadmissibility for the holder of the document. Currently, no fee is charged for this benefit, although each application requires substantial time to adjudicate and provides a clear benefit to the applicant by eliminating the need for a yearly waiver application.

Form I-586 (BCC), and its former version Form I-186, offer the same privileges as the B-1/B-2 visa. The issuance of BCCs is a benefit which the Service performs voluntarily. No law or regulation requires the Service to issue this document, which is an extremely desirable benefit to many Mexican nationals. Possession of the BCC allows access to the area within 25 miles of the border for periods not to exceed 72 hours without the need for further documentation upon each entry. With the issuance of other documentation, the BCC also allows travel to all parts of the United States without the need to obtain a nonimmigrant visa and

passport. The existing Agreement on Passports/Visas (Treaty) between the United States and Mexico currently prohibits charging a fee for the initial issuance of a BCC. However, the treaty does not specifically preclude charging a fee for replacement cards. The application process for replacement is identical to the application for initial issuance, placing a significant demand on personnel resources. Institution of a fee for the application for issuance of a replacement Form I-586 will help to make the process financially self-supporting and substantially expedite issuance of the card.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. The fees proposed in this rule, calculated to cover only the costs of providing the service, are nominal, and will apply only to individuals, not small entities. This rule is not significant within the meaning of section 3(f) of Executive Order 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

#### List of Subjects

##### 8 CFR Part 103

Administrative practice and procedure, Aliens, Authority delegation (Government agencies), Fees, Forms.

##### 8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas.

##### 8 CFR Part 217

Aliens, Passports and visas.

##### 8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Port-of-entry.

##### 8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

##### 8 CFR Part 286

Fees, Immigration, Reporting and recordkeeping requirements.



Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

### **PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS**

1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by adding, in proper numerical sequence, the following forms to the list of forms, to read as follows:

#### **§ 103.7 Fees.**

(b) \* \* \*

(1) \* \* \*

Form I-68. For application for issuance of the Canadian Border Boat Landing Permit under section 235 of the Act—\$16.00. The maximum amount payable by a family (husband, wife, and any minor children under 18 years of age) shall be \$32.00.

\* \* \* \* \*

Form I-94. For issuance of Arrival/Departure Record at a land border Port-of-Entry under section 286 of the Act—\$6.00.

Form I-94W. For issuance of Nonimmigrant Visa Waiver Arrival/Departure Form at a land border Port-of-Entry under section 217 of the Act—\$6.00.

\* \* \* \* \*

Form I-175. For issuance of Nonresident Alien Canadian Border Crossing Card (Form I-185)—\$30.00.

Form I-175. For issuance of replacement Nonresident Alien Mexican Border Crossing Card (Form I-586) in lieu of one lost, stolen, or mutilated—\$26.00.

\* \* \* \* \*

Form I-444. For issuance of a Mexican Border Visitors Permit issued in conjunction with presentation of a Mexican Border Crossing Card or multiple-entry B-1/B-2 nonimmigrant visa to proceed for a period of more than 72 hours but not more than 30 days and to travel more than 25 miles from the Mexican border but within the five-state area of Arizona, California, Nevada, New Mexico, or Texas—\$4.00. The maximum amount payable by a family (husband, wife, and any minor children under 18 years of age) shall be \$8.00.

\* \* \* \* \*

### **PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE**

3. The authority citation for part 212 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1228, 1252; 8 CFR part 2.

4. Section 212.6 is amended by revising paragraph (e) to read as follows:

#### **§ 212.6 Nonresident alien border crossing cards.**

\* \* \* \* \*

(e) *Replacement.* If a nonresident alien border crossing card has been lost, stolen, mutilated, or destroyed, the person to whom the card was issued may apply for a new card as provided for in this section. A fee as prescribed in § 103.7(b)(1) of this chapter must be submitted at time of application for the replacement card. The holder of a Form I-185, I-186 or I-586 which is in poor condition because of improper production may be issued a new form without submitting fee or application upon surrendering the original card.

\* \* \* \* \*

### **PART 217—VISA WAIVER PILOT PROGRAM**

5. The authority citation for part 217 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1187; 8 CFR part 2.

6. Section 217.2 is amended by revising paragraph (c) to read as follows:

#### **§ 217.2 Eligibility.**

\* \* \* \* \*

(c) *Applicants arriving at land border Ports-of-Entry.* Any applicant arriving at a land border Port-of-Entry must provide evidence to the immigration officer of financial solvency and a domicile abroad to which the applicant intends to return. An applicant arriving at a land border Port-of-Entry will be charged a fee as prescribed in § 103.7(b)(1) of this chapter for issuance of Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form.

\* \* \* \* \*

### **PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION**

7. The authority citation for part 235 is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, and 1252.

8. In § 235.1, paragraph (e) is amended by revising the phrase "without application or fee," in the first sentence to read: "upon application and

payment of a fee prescribed under § 103.7(b)(1) of this chapter."

9. In § 235.1, paragraph (f)(1) introductory text, paragraph (f)(2), and paragraph (g)(1) are revised to read as follows:

#### **§ 235.1 Scope of examination.**

\* \* \* \* \*

(f) \* \* \*

(1) *Nonimmigrants.* Except as indicated in this paragraph, each nonimmigrant alien who is admitted to the United States shall be issued a completely executed Form I-94 (Arrival-Departure Record) endorsed to show the alien's date and place of admission, the period of admission, and the alien's nonimmigrant classification. The Form I-94 is valid for applications for admission until it expires or will expire during the alien's intended stay in the United States. A nonimmigrant alien who will be making frequent entries into the United States over its land borders may be issued a Form I-94 endorsed to reflect that it is valid for multiple entries. A nonimmigrant alien entering the United States at a land border Port-of-Entry who is issued Form I-94 will be charged a fee as prescribed under § 103.7(b)(1) of this chapter. In the case of a nonimmigrant alien admitted as a TN under the NAFTA, the specific occupation of such alien as set forth in Appendix 1603.D.1 of the NAFTA shall be recorded in item number 18 on the reverse side of the arrival portion of Form I-94, and the name of the employer shall be notated on the reverse side of both the arrival and departure portions of Form I-94. The departure portion of Form I-94 shall bear the legend "multiple entry". A Form I-94 is not required in the case of:

\* \* \* \* \*

(2) *Paroled aliens.* Any alien paroled into the United States under section 212(d)(5) of the Act, including any alien crewmember, shall be issued a completely executed Form I-94 which must include (i) Date and place of parole, (ii) Period of parole, and (iii) Conditions under which the alien is paroled into the United States. A fee shall not be required when a Form I-94 is issued for the purpose of paroling an alien into the United States.

(g) *Mexican Border Visitor's Permit, Form I-444.* (1) Any Mexican national exempt from issuance of a Form I-94 under paragraph (f)(1) (iii) or (iv) of this section shall be issued a Mexican Border Visitor's Permit, Form I-444, whenever: (i) The period of admission sought is more than 72 hours but not more than 30 days or (ii) The applicant desires to travel more than 25 miles



from the Mexican border but within the five-state area of Arizona, California, Nevada, New Mexico, or Texas. A separate Form I-444 will be issued for each applicant for admission and a fee prescribed under § 103.7(b)(1) of this chapter shall be charged for each applicant.

#### PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

10. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301-1305.

11. Section 264.4 is revised to read as follows:

##### § 264.4 Application to replace a Nonresident Alien Border Crossing Card.

An application for a replacement Nonresident Alien Border Crossing Card must be filed pursuant to § 212.6(e) of this chapter. An application for a replacement Form I-185, Nonresident Alien Canadian Border Crossing Card, must be filed on Form I-175. A fee as prescribed in § 103.7(b)(1) of this chapter must be submitted at time of application. An application for a replacement Form I-586, Nonresident Alien Border Crossing Card, must be filed on Form I-190. A fee as prescribed in § 103.7(b)(1) of this chapter must be submitted at time of application to replace a lost, stolen, or mutilated card.

#### PART 286—IMMIGRATION USER FEE

12. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

13. A new § 286.9 is added to read as follows:

##### § 286.9 Fee for processing applications and issuing documentation at land border Ports of Entry.

(a) *General.* A fee may be charged and collected by the Commissioner for the processing and issuance of specified Service documents at land border Ports of Entry. These fees, as specified in § 103.7(b)(1) of this chapter, shall be dedicated to funding the cost of providing application processing services at land border ports.

(b) *Forms for which a fee may be charged.*

(1) A nonimmigrant alien who is required to be issued, or requests to be issued, Form I-94, Arrival/Departure Record, for admission at a land border Port of Entry must remit the required

fee for issuance of Form I-94 upon determination of admissibility.

(2) A nonimmigrant alien applying for admission at a land border Port of Entry as a Visa Waiver Pilot Program applicant pursuant to § 217.2(c) or § 217.3(c) of this chapter must remit the required fee for issuance of Form I-94W upon determination of admissibility.

(3) A Mexican national in possession of a valid nonresident alien border crossing card or multiple-entry nonimmigrant B-1/B-2 visa who is required to be issued Form I-444, Mexican Border Visitors Permit, Pursuant to § 235.1(g) of this chapter, must remit the required fee for issuance of Form I-444 upon determination of admissibility.

(4) Citizens or lawful permanent resident aliens of the United States, Canadian citizens, and lawful permanent residents of Canada having a common nationality with Canadians, who request Form I-68, Canadian Border Boat Landing Permit, pursuant to § 235.1(e) of this chapter, for entry to the United States from Canada as an eligible pleasure boater on a designated body of water, must remit the required fee at time of application for Form I-68.

(5) A Canadian national or a British subject permanently residing in Canada and having a common nationality with Canada who submits Form I-175, Application for Nonresident Alien Canadian Border Crossing Card, must remit the required fee at time of application for Form I-185.

(6) A Mexican national who submits Form I-190, Application for Nonresident Alien Mexican Border Crossing Card, for replacement of a lost, stolen, or mutilated Form I-586, Nonresident Alien Border Crossing Card, must remit the required fee at time of application for a replacement Form I-586.

Dated: February 25, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94-8717 Filed 4-11-94; 8:45 am]

BILLING CODE 4410-10-M

#### NUCLEAR REGULATORY COMMISSION

##### 10 CFR Part 32

[Docket No. PRM-32-3]

##### Advanced Medical Systems, Inc.; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-32-3) from Advanced Medical Systems, Inc. The petitioner requested that the NRC amend its regulations because it believed that the requirements of part 32, which are applicable to original manufacturers and suppliers, were not equally applicable to manufacturers and suppliers of replacement parts. The petition is being denied because current regulations apply equally to manufacturers and suppliers of both original and replacement parts, ensuring the integrity of these parts; therefore, no additional requirements addressing the regulation of manufacturers and suppliers of replacement parts are necessary. Further, current regulations address service and maintenance of sources and devices possessed and used under an NRC license, including replacement parts, whether manufactured or supplied by the original manufacturer or supplier or some other manufacturer or supplier. Therefore the amendments suggested by the petitioner are not necessary.

**ADDRESSES:** Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Naiem S. Tanious, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3878.

##### SUPPLEMENTARY INFORMATION:

##### The Petition

In a letter dated June 28, 1991, Advanced Medical Systems, Inc. (AMS) filed a petition for rulemaking with the NRC. The petition was docketed by the Commission on July 19, 1991, and was assigned Docket No. PRM-32-3. The petitioner requested that the NRC amend its regulations because it believed that the requirements of part 32, which are applicable to original manufacturers and suppliers, were not equally applicable to manufacturers and suppliers of replacement parts. The petitioner has suggested two alternatives for accomplishing this objective. The first alternative is to insert the necessary language regarding manufacturers and suppliers of replacement parts into each appropriate section of part 32. The second alternative would revise the purpose and scope provisions of § 32.1



to include manufacturers and suppliers of replacement parts.

#### Basis for Petitioner's Request

The petitioner identified itself as an original teletherapy equipment manufacturer. As such, it has a definite and direct interest in the health and safety of the public who may use or be treated by equipment it manufactures.

According to the petitioner, it appears that the requirements of part 32 are being interpreted as applying only to manufacturers and suppliers of original equipment and not to manufacturers and suppliers of replacement parts, devices, products, or sources designated for units originally manufactured or transferred by others. In the petitioner's view, lack of specific requirements applicable to manufacturers and suppliers of replacement parts, devices, products, or sources, can lead to use of inferior quality replacement parts which in turn can cause malfunction or failure of devices, in particular teletherapy equipment, and thereby risk of overexposure. Advanced Medical Systems cited two incidents as examples of this problem: Access No. M49250, Anderson Memorial Hospital, Anderson, South Carolina; and Access No. M49324, St. Mary's Medical Center, Saginaw, Michigan.

#### Public Comments on the Petition

A notice of receipt of the petition for rulemaking was published in the *Federal Register* on October 10, 1991 (56 FR 51182). Interested persons were invited to submit written comments concerning the petition. The comment period closed December 9, 1991. The NRC received comments from the State of Illinois, Department of Nuclear Safety, and the Department of the Air Force, Headquarters Air Force Office of Medical Support.

The State of Illinois, Department of Nuclear Safety, stated that the Department fully supports development of the rule proposed in the petition. The Department further stated that the integrity of NRC evaluated devices (NRC or an Agreement State evaluate for safety any devices containing radioactive materials) may be compromised significantly if nonstandard replacement parts are used during the life of the device. While the Department agreed that the issue of replacement components needs to be addressed, it was concerned with the use of the term "replacement sources and devices" in the wording of §§ 32.74, 32.110 and 32.210 as suggested by the petitioner. The Department believed that all sources and devices must be evaluated by the NRC or an Agreement

State, whether or not they are considered "original" or "replacement" equipment. Therefore, the Department did not believe it is necessary to distinguish between original or replacement sources or devices. The Department was in favor of the petitioner's suggested alternative to modify § 32.1, Purpose and Scope.

The Headquarters Air Force Office of Medical Support, Department of the Air Force, opposed the rule language proposed by the petitioner, as written, although it agreed with the petitioner's intent to ensure that the safety and effectiveness of devices not be compromised because original parts are replaced by inferior ones. They did not agree that all replacement parts should be subject to the requirements of 10 CFR part 32. They stated that NRC review and approval should apply to replacements of parts or components that are essential to the proper and safe operations of a device. The Air Force gave examples of parts (such as panel screws and covers) that conform to industry standards. These, the Air Force stated, should not be subject to the proposed requirements. The Air Force voiced concern that the petition, as written, may serve to restrict competition and would lead to greater expense which would have to be recouped through higher medical costs from patients, or, in the case of the Air Force, from taxpayers.

#### NRC Action on the Petition

The NRC reviewed the petition, the public comments, and the two cases (incidents) cited by the petitioner as supporting evidence for filing this petition. The NRC also reviewed its regulations pertinent to the petition.

Shortly after the NRC received correspondence<sup>1</sup> from AMS about the two cases, the NRC advised<sup>2</sup> AMS of its intention to investigate these incidents, especially with regard to the quality of service and replacement parts used in servicing the teletherapy units. From October to December 1989, the NRC conducted a thorough investigation which included three onsite inspections: Atom Mechanical Company, Cleveland, Ohio (The servicing company that conducted the maintenance and replacement of parts

in the two cases), St. Mary's Medical Center, Saginaw, Michigan, and Picker International, Highland Heights, Ohio (The company that manufactured the teletherapy units at Anderson Memorial Hospital and at St. Mary's Medical Center). The NRC also referred the case of Anderson Memorial to the State of Maryland, because the company that serviced the teletherapy unit there, Atom Mechanical Company, is an authorized user on the Neutron Products, Inc. license, and Neutron Products is located in the State of Maryland, an Agreement State.

The incident at Anderson Memorial Hospital was caused by a broken spring in a teletherapy unit which failed to retract the source into the OFF position following a cobalt-60 cancer treatment. The hospital technologist promptly retracted the source manually. According to the hospital report, the technologist received very little additional exposure over expected monthly exposure, as evidenced by the individual's radiation film badge reading. Moreover, according to the same report the delivered daily dose to the patient was less than the prescribed daily dose, i.e., no patient overexposure for that treatment, because the technologist acted promptly. In its communication with NRC (prior to filing the petition), AMS stated that it was concerned about the quality of the replacement springs used in the teletherapy machine.

The incident at St. Mary's Medical Center was caused by the failure of a microswitch. The failure of the switch prevented a timing device from operating properly, to automatically terminate the treatment. No misadministration occurred because the subsequent treatment times were adjusted and the total delivered dose did not differ from the total prescribed dose. Neutron Products, Inc. was called to repair the machine.

The NRC investigation and subsequent inspections revealed several violations. Enforcement action was taken by the NRC against Atom Mechanical for violation of part 21 requirements, and against St. Mary's Hospital and Picker International for violations of part 35 and part 30 requirements, respectively.<sup>3</sup> Moreover,

<sup>1</sup> Three letters dated June 20, August 8, and August 25, 1989, to Hugh L. Thompson, Jr., Deputy Executive for Nuclear Materials Safety and Safeguards & Operations Support, NRC, from Sherry Stein, Director, Regulatory Affairs, Advanced Medical Systems, Inc.

<sup>2</sup> By a letter dated September 15, 1989 from Robert M. Bernero, Director, Office of Nuclear Material Safety and Safeguards, NRC, to Sherry Stein, Director, Regulatory Affairs, Advanced Medical Systems, Inc.

<sup>3</sup> Specifically, Atom Mechanical Company was found to be in violation of 10 CFR 21.21 (October 16, 1989), St. Mary Medical Center was found to be in violation of 10 CFR 35.59(g), 10 CFR 35.605, 10 CFR 35.630(a), 10 CFR 35.615(d)(4), 10 CFR 35.632(a), and 10 CFR 35.634(a) (October 17 and 26, 1989), and Picker International, Inc. was found to be in violation of 10 CFR 30.3 (subsequent to inspections that occurred on October 26 and



the State of Maryland determined from its own investigation that the incident at Anderson Memorial Hospital resulted from a failure of the part, i.e., breakage of the return spring. No enforcement action was taken by the State of Maryland.

Under current NRC regulations, persons authorized under a specific license to use devices containing byproduct material (e.g., use of teletherapy equipment under a part 35 specific license) ultimately are responsible for the safe use of these devices, and for assuring that such devices are properly maintained. Suppliers of sources or devices containing byproduct material, whether they are an original manufacturer or a manufacturer of replacement sources or devices, must be licensed under parts 30 or 32 or an appropriate Agreement State license, and also have responsibility for the safety of the sources or devices that they supply or replace. Service or repair, which would include the replacement of parts or components of medical or industrial sources or devices that present a risk of radiation exposure from the failure of certain parts, such as the teletherapy devices discussed as examples in this petition, may be performed only by qualified persons authorized under an NRC or Agreement State license (cf. §§ 35.605, and 39.43(e)). Some generally licensed devices may be serviced by general licensees who are authorized to perform limited service work if sufficient information about the service work (e.g., procedures, training, expected dose, etc.) is submitted by manufacturer or initial distributor and accepted by the NRC. However, these devices typically are not mechanically complex and do not present the same risk of significant radiation exposure. Moreover, the NRC has no record of failure of these devices leading to a radiation exposure attributable to defective replacement parts or improper servicing. Finally, under the provisions of part 21, the supplier of any basic component,<sup>4</sup> whether or not a licensee of NRC or an Agreement State, is also responsible for the quality of the component, whether it is original or replacement.

#### Reasons for Denial

The NRC has examined the petition (1) in light of its regulations and policies for both general and specific licensees, and (2) in view of the cases cited by the petitioner in support of the petition. The

NRC is denying the petition because current regulations apply equally to manufacturers and suppliers of both original and replacement parts, ensuring the integrity of these parts; therefore, no additional requirements addressing the regulation of manufacturers and suppliers of replacement parts are necessary. Further, current regulations address service and maintenance of sources and devices possessed and used under an NRC license, including replacement parts, whether manufactured or supplied by the original manufacturer or supplier or some other manufacturer or supplier.

Accordingly, the petition for rulemaking is denied.

Dated at Rockville, Maryland this 28th day of March, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94-8697 Filed 4-11-94; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 94-CE-05-AD]

#### Airworthiness Directives: Univair Aircraft Corporation Models Ercoupe 415-C, 415-CD, 415-D, 415-E, and 415-G, Forney F-1 and F-1A, Alon A-2 and A-2A, and Mooney M10 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to Univair Aircraft Corporation (Univair) Models Ercoupe 415-C, 415-CD, 415-D, 415-E, and 415-G, Forney F-1 and F-1A, Alon A-2 and A-2A, and Mooney M10 airplanes. The proposed action would require installing inspection openings in the outer wing panels, inspecting (one-time) the wing outer panel structure for corrosion, and repairing any corrosion found. Several reports of corrosion in the outer wing panels of the affected airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent wing structural damage that, if not detected and corrected, could progress to the point of failure.

**DATES:** Comments must be received on or before June 24, 1994.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94-CE-05-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011; telephone (303) 375-8882; facsimile (303) 375-8888. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger P. Chudy, Aerospace Engineer, FAA, Denver Aircraft Certification Field Office, 5440 Roslyn Street, suite 133, Denver, Colorado 80216; telephone (303) 286-5684; facsimile (303) 286-5689.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 94-CE-05-AD." The postcard will be date stamped and returned to the commenter.

##### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

November 9, 1989). Inspection reports are available for review in the NRC Public document room.

<sup>4</sup> A "basic component" is defined in part 21 as one, " \* \* \* in which a defect could create a substantial safety hazard."



FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94-CE-05-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

#### Discussion

The FAA has received several reports of wing structure corrosion on Univair Models Ercoupe 415-C, 415-CD, 415-D, 415-E, and 415-G, Forney F-1 and F-1A, Alon A-2 and A-2A, and Mooney M10 airplanes. At least four of these incidents revealed major corrosion in the outer wing panels.

Current maintenance inspection provisions do not allow for thorough viewing of the wing structure. With this in mind, Univair issued Service Bulletin (SB) No. 29, dated January 27, 1994, which specifies procedures for (1) installing inspection openings in the outer wing panels, and (2) inspecting the outer wing panels for evidence of corrosion.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken to prevent wing structural damage that, if not detected and corrected, could progress to the point of failure.

Since an unsafe condition has been identified that is likely to exist or develop in other Univair Models Ercoupe 415-C, 415-CD, 415-D, 415-E, and 415-G, Forney F-1 and F-1A, Alon A-2 and A-2A, and Mooney M10 airplanes of the same type design, the proposed AD would require installing inspection openings in the outer wing panels, inspecting (one-time) the wing outer panel structure for corrosion, and repairing any corrosion found. The proposed actions would be accomplished in accordance with Univair SB No. 29, dated January 27, 1994. The inspection will become part of the affected airplanes' annual maintenance inspection program.

The compliance time for the proposed AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time for compliance is the most desirable method because the unsafe condition described by the proposed AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service or in storage. Therefore, to ensure that corrosion is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours TIS is utilized.

The FAA estimates that 2,672 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 8 workhours (maximum) per airplane to accomplish the proposed action, and that the average labor rate is approximately \$55 an hour. Parts cost approximately \$67 (maximum) per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$1,354,704. This figure is based on the assumption that no affected airplane owner/operator has accomplished the proposed action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

#### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

**Univair Aircraft Corporation:** Docket No. 94-CE-05-AD.

**Applicability:** Models Ercoupe 415-C, 415-CD, 415-D, 415-E, and 415-G, Forney F-1 and F-1A, Alon A-2 and A-2A, and Mooney M10 airplanes (all serial numbers), certificated in any category.

**Compliance:** Required within the next 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent wing structural damage that, if not detected and corrected, could progress to the point of failure, accomplish the following:

(a) Install inspection openings in the outer wing panels and inspect the wing outer panel internal structural components for corrosion in accordance with the PROCEDURE section of Univair Service Bulletin No. 29, dated January 27, 1994. Prior to further flight, repair any corrosion in accordance with instructions contained in the above-referenced service information.

(b) Send the results of the inspection required by paragraph (a) of this AD to the Manager, Denver Aircraft Certification Field Office, 5440 Roslyn Street, suite 133, Denver, Colorado 80216. State whether corrosion was found, the location and extent of any corrosion found, and the total hours TIS of the component at the time the corrosion was found. (Reporting approved by the Office of Management and Budget under OMB no. 2120-056.)

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Denver Aircraft Certification Field Office, 5440 Roslyn Street, suite 133, Denver, Colorado 80216. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Denver Aircraft Certification Field Office.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Denver Aircraft Certification Field Office.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Univair Aircraft Corporation, 2500 Himalaya Road, Aurora, Colorado 80011; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on April 6, 1994.

**Larry D. Malir,**

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-8681 Filed 4-11-94; 8:45 am]

BILLING CODE 4910-13-U



## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1915

[Docket No. S-047A]

RIN 1218-AA68

## Safety Standards for Scaffolds Used in Shipyard Employment

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule; limited reopening of the rulemaking record.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is reopening the record for the proposed revision of the regulation of scaffolds used in shipyard employment (part 1915, subpart N) (53 FR 48182, November 29, 1988). This reopening incorporates the entire record for scaffolds used in the construction industry (part 1926, subpart L) (Docket S-205, 51 FR 42680, November 25, 1986; Docket S-205A, 58 FR 16509, March 29, 1993; Docket S-205B, 59 FR 4615, February 1, 1994) including the scaffold-related materials from the record for the proposed general industry standard for walking and working surfaces (part 1910, subpart D) (Docket S-041, 55 FR 13360, April 10, 1990) that were previously incorporated into the subpart L record in Docket S-205B. Through this notice, the Agency also requests input on the scope and application of subpart N; the appropriateness of replacing the term "capable person" with the term "qualified person" throughout subpart N; the maximum permissible distance between the front edge of a platform and the face of a vessel or structure; the requirements for a scaffold that the Agency considers to be an interior hung scaffold; the frequency of scaffold inspections; the qualifications for persons performing scaffold inspections; and the requirements for the performance of electric welding operations from suspension scaffolds. In addition, this notice corrects a typographic error in proposed paragraph § 1915.252(b)(18)(iv) and invites public comment on that paragraph as corrected. The information received as a result of this action will be used by the Agency in developing its final rule for scaffolds used in shipyard employment.

**DATES:** Written comments on the materials incorporated through the notice of reopening must be postmarked by June 13, 1994.

**ADDRESSES:** Comments are to be sent to the Docket Office, Docket No. S-047A, U.S. Department of Labor, room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Written comments limited to 10 pages or less in length also may be transmitted by facsimile to (202) 219-5046, provided that the original and three copies are sent to the Docket Office thereafter.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster, Occupational Safety and Health Administration, U.S. Department of Labor, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219-8148.

**SUPPLEMENTARY INFORMATION:****I. Background****A. Scope and Application**

Proposed § 1915.251(a)(1) reads as follows:

(a) Scope and application. (1) This subpart applies to all scaffolds used in shipyard workplaces and operations (including shipbuilding, ship repairing, and shipbreaking), but does not apply to construction operations in shipyards covered under 29 CFR part 1926.

OSHA received only two comments (Exs. 6-1 and 6-3) on this paragraph. Both of those commenters stated that the inclusion of the construction standards in the application of the shipyard standards is inappropriate and would be counterproductive to efforts to bring uniformity to shipyard employment through a vertical standard. They suggested that this paragraph be changed in order to apply part 1926 only to work being performed in a shipyard by outside non-shipyard employees.

It should be noted that construction work in shipyards is performed by both shipyard employees and non-shipyard employees. Shipyard employees fabricate and construct smoke stacks, tunnel sections, railroad cars, and bridge sections when shipbuilding, ship repairing, and shipbreaking work are either unavailable or in short supply. This work involves the use of scaffolds in shipyards. OSHA is considering whether all scaffold-related work performed at shipyards, regardless of who performs the work, should be covered by standards in part 1915, subpart N. If the Agency adopts that approach, subpart N will apply whenever employees perform work involving scaffolds, including construction operations in shipyards.

The Agency notes that several types of scaffolds specifically addressed in the proposed construction scaffold standards were not addressed in the proposed shipyard scaffold standards. If

the Agency were to adopt a comprehensive approach to scaffold use in shipyards, it would incorporate the various construction scaffold standards into part 1915, except that the shipyard scaffold standard's threshold height for the provision and use of fall protection (5 feet (1.52 m)) would apply. Placing those standards in part 1915 would make the proposed reference to part 1926 unnecessary.

In addition, the Agency is considering if the use of the term "shipyard workplaces and operations" in proposed § 1915.251(a)(1) inappropriately limits the scope and application of proposed subpart N. Accordingly, OSHA is contemplating replacement of the proposed term with the term "shipyard employment", so that the activities covered by subpart N would be described accurately.

OSHA is also considering whether the proposed exclusion of construction operations from the scope of subpart N should be limited to outside contractors using non-shipyard employees. Under such an approach, the scaffold operations of outside (non-shipyard) construction employers would still be subject to part 1926, subpart L. In addition, OSHA would require that scaffolds addressed by part 1926, but not by part 1915, comply with part 1926, regardless of who the affected employers and employees were. Accordingly, the Agency seeks comment on all or part of the following alternative language for proposed § 1915.251(a)(1):

(a) Scope and application. (1) This subpart applies to all scaffolds, except as indicated below, used in shipyard employment (e.g., shipbuilding, ship repairing, shipbreaking, and related employments), but does not apply to construction operations being performed in shipyards by outside contractors using non-shipyard employees.

(i) Types of scaffolds which are specifically covered by 29 CFR part 1926 subpart L, but which are not specifically addressed by this subpart, shall meet the applicable requirements of part 1926 subpart L, except that fall protection shall be provided for each shipyard employee working more than 5 feet (1.52 m) above a lower level on such scaffolds.

**B. Qualified Person**

OSHA proposed in §§ 1915.252 (b)(11), (b)(12), (b)(18)(i), and (d)(4) that scaffolds be evaluated by a capable person, and in § 1915.252(d)(7) that scaffolds not be erected, moved, dismantled, or altered except under the supervision of a capable person. Furthermore, OSHA proposed the following definition, which is identical to the definition of "competent person" in § 1926.32(f), for "capable person":



"Capable person" means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

At its meeting on November 20, 1991, the Shipyard Employment Standards Advisory Committee (SESAC) recommended (Tr. p. 84) that OSHA replace the term "capable person" with the term "qualified person" throughout the shipyard standards (29 CFR part 1915). Accordingly, OSHA is considering the appropriateness of replacing the term "capable person" with the term "qualified person (QP)" in the above-mentioned standards. The definition being considered for "qualified person (QP)" is based on the definition for "qualified" found in § 1926.32(l) of the construction standards to which the word "person" and the clause "and who has authorization to take prompt corrective measures to eliminate any such problems" have been added in order to indicate clearly that a "qualified person (QP)", for the purposes of subpart N, would have both the ability and the authority needed to correct problems. Accordingly, OSHA seeks comment on the following definition, which would apply to subpart N only:

"Qualified person (QP)" means an individual who by possession of a recognized degree or certificate of professional standing, or who, by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve problems related to the subject matter, the work, or the project, and who has authorization to take prompt corrective measures to eliminate any such problems.

Does a person who evaluates scaffolds need authority over other employees in order to perform his or her duties?

#### C. Maximum Distance Between the Front Edge of a Platform and the Face of a Vessel or Structure

Proposed paragraph § 1915.252(b)(4), which is effectively identical with proposed § 1926.451(b)(4), reads as follows:

(4) The front edge of all platforms, except those on outrigger scaffolds, shall be positioned not more than 14 inches (36 cm) from the face of the vessel, vessel section, building or structure being worked on, unless Type I guardrails are erected along the open edge or body belt/harness systems are used to protect employees from falling. The maximum distance for outrigger scaffolds shall be 3 inches (8 cm).

OSHA is concerned that allowing a 14-inch (36 cm) opening may not be justified by the nature of work

performed in shipyards. Unlike construction work, where an opening of up to 14 inches (36 cm) may be necessary if the structure is being constructed outward toward the scaffold, the fabrication of vessels and similar structures by shipyard workers is not usually conducted in that manner. Accordingly, OSHA seeks public comment on the appropriateness of reducing the maximum space allowed between the front edge of a platform and the face of the structure. Should OSHA extend the 3-inch (7.62 cm) maximum distance provision for outrigger scaffolds to cover all scaffolds? Should OSHA set some other distance? If so, what should that distance be? Please submit supporting information with any suggestions.

#### D. Interior Hung Scaffolds

OSHA recently became aware of a type of scaffold used in shipyards that consists of single-level or multi-level platforms suspended by several wire ropes attached to "S" hooks inserted through openings in the overhead longitudinal structural members in tanks. Wire rope clips are used to form the ends of the ropes into eyes. Those eyes are placed over the bottom of the "S" hooks. The platforms are supported by horizontal struts (usually, metal pipes) with slotted ends into which the suspension ropes are placed with a bolt or wire placed at the end of the opening. The struts rest on wire rope clips attached to the suspension ropes. OSHA is concerned that the proposed rules may not adequately address these scaffolds. The Agency also has some concerns about the adequacy of the proposed requirements for suspension scaffolds, in general. Accordingly, OSHA seeks public comment on the following issues:

1. OSHA has characterized these scaffolds as a type of interior hung scaffold. To what extent is the above-described characterization correct? If this characterization is correct, to what extent do the proposed requirements for interior hung scaffolds (§ 1915.253(p)) and the general scaffold requirements (§ 1915.252) adequately address the above-described scaffolds? To what extent does proposed Appendix A adequately address the above-described scaffolds? What changes, if any, should be made in proposed subpart N to improve the coverage of the above described scaffolds?

2. The Agency is concerned about the possibility that a suspension rope could be inadvertently disconnected from an "S" hook, thereby allowing an interior hung scaffold to fall. Accordingly, OSHA is considering requiring that the

end of the "S" hook which supports the suspension rope be effectively closed. If so, what methods can be used to close the hook? OSHA is considering if mousing (wrapping rope around the hook opening when the suspension rope is connected) would adequately assure that the suspension rope did not disconnect from the "S" hook. What experience have employers had with the use of mousing to close the hook opening? OSHA is also considering if locking hooks, such as required in § 1910.66, Powered platforms, should be required. To what extent would the use of locking hooks be appropriate with these scaffolds?

3. Proposed paragraph § 1926.253(p)(3) requires that suspension ropes and cables on interior hung scaffolds be connected to overhead supporting members by shackles, clips, thimbles, or equivalent means. To what extent do the "S" hooks used on the above-described scaffolds constitute equivalent means of connection? Should OSHA prohibit the use of "S" hooks for suspending these scaffolds?

4. OSHA is also concerned about the possibility that an "S" hook could be inadvertently disconnected from its support, thereby allowing an interior hung scaffold to fall. Accordingly, OSHA is considering requiring that the "S" hooks be secured to the overhead longitudinal structural members in tanks. If so, what methods can be used to secure them?

5. In its rulemaking for scaffolds used in construction, OSHA reopened the rulemaking record (58 FR 16509, March 29, 1993) to solicit comments and information regarding the feasibility of providing fall protection and safe access for employees erecting and dismantling scaffolds, including interior hung scaffolds (proposed § 1926.452(t)). The materials submitted in response to that notice (Ex. 34, with attachments) will be considered when OSHA drafts the final rule for part 1915, subpart N.

In addition, the Agency is considering requiring the provision and use of fall protection and safe access for employees erecting and dismantling scaffolds used in shipyard employment. To what extent is it feasible for shipyard employers to provide fall protection and safe access for employees erecting or dismantling scaffolds, such as the above-described scaffolds, used in shipyard employment?

6. How would a fall protection requirement affect the erection and dismantling of scaffolds?

7. OSHA is considering requiring that measures be taken to prevent the swaying of vertical lines suspending employees erecting or dismantling the



above-described scaffolds. What measures have been taken to prevent such swaying? What other methods would be appropriate?

8. OSHA is considering specifying a minimum diameter for wire ropes used to suspend these scaffolds. Proposed 1915.252(a)(4)(ii) requires that ropes suspending catenary scaffolds be equivalent to at least one-half inch diameter wire rope. Would that minimum diameter be appropriate for the above described scaffolds? If not, how should OSHA address the minimum diameter for ropes used to suspend such scaffolds?

9. OSHA is considering requiring that only improved plow steel wire rope be used as suspension ropes on scaffolds. To what extent would such a requirement be appropriate?

10. OSHA is concerned that incorrect size wire rope clips might be used on the wire ropes used to suspend scaffolds. Accordingly, OSHA is considering specifying that when clips are used they must be the right size for the rope. To what extent would such a requirement be appropriate?

11. When a U-bolt wire rope clip is installed backwards on a wire rope (i.e., the saddle is placed on the dead end and the U-bolt is placed on the live end of a rope), the live end may be damaged through contact with the U-bolt. OSHA is concerned that the use of U-bolt wire rope clips could damage wire rope so that a rope is not capable of supporting a scaffold. Accordingly, OSHA is considering prohibiting the use of U-bolt wire rope clips on suspension scaffolds. To what extent would such a requirement be appropriate?

12. The struts that support the platforms on the above described scaffolds usually rest on wire rope clips attached to the suspension ropes. The clips usually are attached to only one section of the rope, instead of two sections as is the case when an eye is formed in a rope. OSHA is concerned that wire rope clips, especially U-bolt clips, used in this manner might not provide adequate support for a scaffold. OSHA is also concerned that wire rope clips, especially U-bolt clips, used in this manner might damage a rope, reducing its load carrying ability (see question 11 above). Accordingly, OSHA is considering prohibiting the use of wire rope clips in this manner, and seeks comment on the extent to which wire rope clips adequately support the struts when used in this manner. Would it be appropriate for OSHA to prohibit the use of U-bolt clips for this purpose, but to allow such a use of double-saddle clips? If the use of clips is allowed for this purpose, (1) are clips necessary on

the top of each strut as well as at the bottom in order to adequately secure each strut to its wire rope, and (2) how many clips should OSHA require, as a minimum, for rigging these scaffolds?

13. OSHA is considering requiring that measures be taken to prevent the unintentional dislodgement of a suspension rope from the slot in a strut. Accordingly, the Agency seeks comment on the feasibility of complying with such a requirement. If such a requirement is promulgated, should OSHA specify the use of a bolt and nut that are at least 1/2 inch (1.27 cm) in diameter for this purpose? Also, Should OSHA prohibit the use of tie wires for this purpose?

14. OSHA is concerned that suspension ropes used on the above-described scaffolds could be damaged through contact with the struts or the overhead longitudinal structural members found in tanks. Accordingly, OSHA is considering requiring that measures be taken to prevent damage to suspension ropes from contact with the struts or the overhead longitudinal structural members. To what extent do the procedures currently used to rig such scaffolds prevent damage? What, if any, changes to rigging procedures or equipment are needed?

15. OSHA is considering setting minimum requirements (such as length, diameter, thickness (wall thickness for pipes), shape, or type of material) for the struts used to support the above-described scaffolds. What, if any, minimum requirements should the Agency set for the struts? To what extent would struts currently in use satisfy any such requirements?

16. OSHA is concerned that scaffolds designed by persons lacking the necessary skills and knowledge may prove to be unsafe. Accordingly, OSHA seeks comment on the level of expertise that should be required for persons who design scaffolds and scaffold components. Should OSHA require that scaffolds and scaffold components be designed by a registered professional engineer? Should OSHA require that scaffolds and their components be designed by a person who is "qualified" as defined in § 1926.32(l) (see discussion of Item B, above)?

17. OSHA is considering prohibiting the performance of heavy structural repairs and steel erection from the above-described scaffolds to prevent situations where an overload could occur. To what extent are structural repairs and steel erection performed from such scaffolds? How reasonable would it be for OSHA to require that any such work be performed using other means of access?

18. Proposed paragraph § 1915.252(e)(1)(i) requires that employees on catenary scaffolds, float scaffolds, and needle beam scaffolds, all of which are non-adjustable scaffolds, be protected by personal fall arrest systems. Since the above-described scaffolds and interior hung scaffolds in general are also non-adjustable suspension scaffolds, OSHA is considering requiring the provision of personal fall arrest systems for employees working on the above-described scaffolds. The Agency is also considering requiring personal fall arrest systems for suspended scaffolds in general. To what extent are such systems currently provided to and used by affected employees?

19. OSHA is considering requiring the use of guardrail systems on the above-described scaffolds. Accordingly, the Agency seeks information on methods that are currently used to provide guardrail systems on those scaffolds. To what extent are the ropes used to suspend the scaffold capable of serving as vertical supports in a guardrail system?

20. In what types of shipyard operations, other than for blasting and painting, are the above-described scaffolds used?

21. Does the use of the above-mentioned scaffolds expose employees erecting, dismantling, or using them to any unique hazards? If so, what are those hazards, and how can the employer prevent them or protect employees from them?

22. OSHA is considering requiring that the suspension ropes on the above-described scaffolds be secured at the bottom of the tank. To what extent are suspension ropes currently being secured? What methods are being used? What other methods would be appropriate?

23. OSHA is considering requiring that the suspension ropes on the above-described scaffolds be kept in a vertical position while employees are on the scaffolds. To what extent are suspension ropes currently kept in a vertical position? What methods are being used? What other methods would be appropriate?

24. OSHA is considering requiring that platform units used on the above-described scaffolds be secured to the supporting struts. To what extent are those scaffolds currently secured to the supporting struts? What methods are used or can be used for securing the platform units to the struts?



### E. Inspection of Scaffolds

Proposed paragraph § 1915.252(d)(3) requires that scaffolds be inspected as follows:

(3) Supported scaffolds and scaffold components shall be inspected for visible defects periodically and after any occurrence which could affect a scaffold's structural integrity. Suspension scaffolds and scaffold components shall be inspected for visible defects immediately after installation prior to their first use; periodically thereafter (preferably before each use); and after any occurrence which could affect a scaffold's structural integrity.

This language does not specify who is to perform the inspection or what qualifications that person must possess, nor does it specify how frequently inspections must occur. The Agency sought public comment in these matters for both supported and suspension scaffolds in Issue 13 of the proposal. In that issue the Agency stated incorrectly that the proposed rule required supported scaffolds and scaffold components to be inspected for visible defects prior to each workshift and after any occurrence which could affect the scaffold's structural integrity. The Agency intended all scaffolds and scaffold components to be inspected for visible defects prior to each workshift. However, proposed paragraph § 1915.252(d)(3) simply expresses a preference for inspection before each use. The Agency also sought public comment on whether the scaffold inspector should be an engineer, a qualified person, or a capable person.

OSHA received three comments (Exs. 6-1, 6-3, and 6-7) in response to Issue 13. Two of these commenters (Exs. 6-1 and 6-3) stated that the proposed rule uses specification-oriented language and is unnecessarily restrictive, and that a thorough inspection before each workshift would be impossible and expensive. These two commenters added that existing rule § 1915.71(b)(5), which requires that scaffolds be maintained in a safe and secure condition and that defective components be replaced, is performance-oriented and has caused the industry to implement effective programs to ensure safe scaffolds. They recommended the retention of existing § 1915.71(b)(5), and that proposed § 1915.252(d)(3) not be included in the final rule. The other commenter (Ex. 6-7) stated that "[s]caffolds should be inspected by a capable person during and immediately after the system is anchored. Thereafter, the system should be inspected daily by the employees using the system." This commenter added that the proposed frequency of

inspections adequately reflects current shipyard practices.

OSHA does not believe that proposed § 1915.252(d)(3) is unnecessarily restrictive. To the contrary, OSHA is concerned that proposed § 1915.252(d)(3) and existing § 1915.71(b)(5) might not adequately address the hazards associated with the use of unsafe scaffolds. Accordingly, the Agency seeks public comment on the adequacy of proposed § 1915.252(d)(3), and on the appropriateness of replacing proposed § 1915.252(d)(3) with the following language, which is the same as the corresponding proposed requirement for scaffolds used in the construction industry (51 FR 42706, November 25, 1986) except that "competent person" has been changed to "qualified person" (see discussion of Item B, above):

(3) Scaffolds and scaffold components shall be inspected for visible defects by a qualified person prior to each work shift, and after any occurrence which could affect a scaffold's structural integrity.

### F. Correction to Proposed § 1915.252(b)(18)(iv)

The word "not" was inadvertently dropped from paragraph § 1915.252(b)(18)(iv) when proposed subpart N was published in the *Federal Register* (53 FR 48207, November 29, 1988). Due to a typographic error, proposed § 1915.252(b)(18)(iv) read as follows:

(iv) Counterweights shall be removed from a scaffold until the scaffold is disassembled.

The preamble discussion for proposed § 1915.252(b)(18)(iv) (53 FR 48188) clearly states that OSHA intended to prohibit the removal of counterweights until the scaffold is disassembled. In addition, the Agency notes that the corresponding provision in proposed part 1926, subpart L (§ 1926.451(b)(18)(iv)) states that "counterweights shall not be removed \* \* \*." Proposed paragraph § 1915.252(b)(18)(iv) should have read as follows:

(iv) Counterweights shall *not* be removed from a scaffold until the scaffold is disassembled (emphasis added).

OSHA seeks public comment on the appropriateness of the proposed provision as corrected.

### H. Performance of Electric Welding Operations From Suspension Scaffolds

OSHA raised the issue of the regulation of electric welding on suspension scaffolds in Issue 2 of the NPRM (53 FR 46197). The Agency asked for input on six precautions that might reduce the possibility of the welding

current arcing through the wire rope when welding is performed by employees on suspension scaffolds. OSHA received only one response to Issue 2. That commenter (Ex. 6-7) stated that the use of welding equipment on suspended platforms has not caused any safety hazards.

On the issue of welding work performed while on scaffolds, OSHA seeks public comment on the following provisions that are being considered for inclusion in the final rule. These requirements are the same as those found in section 6.2.9 of ANSI A10.8-1988 except that in paragraph (b) the term "unit" has been changed to "scaffold" so that the language clearly indicates the Agency's intent.

To reduce the possibility of the welding current arcing through the suspension wire rope during the course of welding from suspension scaffolds, the following precautions shall be taken:

(a) An insulated thimble shall be used to attach each suspension wire rope to its hanging support (such as cornice hook or outrigger). Excess suspension wire rope and any additional independent lines from grounding shall be insulated.

(b) The suspension wire rope shall be covered with insulating materials at least 4 feet (1.22 m) above the hoist. In the event a tail line exists below the hoist, it shall be insulated to prevent contact with the platform. The portion of the tail line that hangs free below the scaffold shall be guided or retained, or both, so that it does not become grounded.

(c) Each hoist shall be covered with protective cover made from insulating materials.

(d) In addition to a work lead attachment required by the welding process, a grounding conductor shall be connected from the scaffold to the structure. The size of this conductor shall be equal to or greater than the size of the welding process work lead and shall not be in series with the welding process or the work piece.

(e) If the scaffold grounding lead is disconnected at any time, the welding machine shall be shut off.

(f) At no time shall an active welding rod or an uninsulated welding lead be allowed to contact the scaffold or its suspension system.

Paragraph (b) above addresses suspension scaffolds with hoists but does not specifically address non-adjustable suspension scaffolds (i.e., scaffolds that do not have hoists). The Agency believes that employees performing welding operations from non-adjustable suspension scaffolds are exposed to the same or similar hazards as those faced by employees on adjustable suspension scaffolds. Accordingly, the Agency seeks public comment on the following issues:

1. Should OSHA require that wire ropes on non-adjustable suspension scaffolds from which employees are



performing welding operations be insulated to a height above the scaffold sufficient to prevent accidental contact between the ropes and an active welding rod or an uninsulated welding lead? If so, what should that height be?

2. Should OSHA require that an insulated thimble or equivalent be used to attach each suspension wire rope to the platform of a non-adjustable suspension scaffold used for welding operations?

3. What other measures should OSHA require for the protection of employees performing welding from suspended scaffolds?

**I. Incorporation of Dockets S-205, S-205A, and S-205B (Part 1926, Subpart L, Scaffolds Used in the Construction Industry)**

On November 25, 1986, the Agency proposed to update the requirements for protection of employees on scaffolds used in construction (part 1926, subpart L, 51 FR 42680). The public record on scaffolds used in construction was reopened on March 29, 1993 (58 FR 16509), and again on February 1, 1994 (59 FR 4615). The proposed construction industry requirements for scaffolds were generally consistent with those proposed for shipyards in 1988. The construction proposal and the two notices of limited reopening generated public input which OSHA is considering as the Agency drafts the final rule for scaffolds covered by part 1926, subpart L. Many of those materials contain relevant information or raise scaffold-related concerns not yet addressed in the comments on part 1915, proposed subpart N. The Agency believes that, in developing separate standards for the construction industry (part 1926) and for the shipyard industry (part 1915), the substance of those standards should be consistent, except where there are demonstrable differences in scaffold use which would justify differences in coverage.

Therefore, OSHA has determined that the Agency needs to consider the information generated in the subpart L rulemaking when the Agency drafts the final rule for scaffolds in the shipyard industry. In addition, OSHA notes that Docket S-205B also contains scaffold-related materials from the proposed general industry standard for walking and working surfaces (Docket S-041, part 1910, subpart D) and an August, 1993, NIOSH study of construction-related fatalities titled *Fatal Injuries to Workers in the United States, 1980-1989: A Decade of Surveillance*. In order to assure that those relevant materials are considered by both the Agency and the public as they relate to scaffold use

in shipyards, OSHA is incorporating pertinent exhibits from the construction industry rulemaking record (Dockets S-205, S-205A, and S-205B) into the part 1915, subpart N rulemaking (Docket S-047). All the materials incorporated from subpart L will be identified in the subpart N docket as Exhibit 8, with attachments.

**J. Costs, Benefits, and Technological Feasibility**

In the regulatory analysis accompanying the proposed rule published in the *Federal Register* on November 29, 1988, the Agency identified three provisions that would impose compliance burdens: (1) Requiring scaffolds to be no more than 14 inches from the vertical work area unless there was a guardrail or body belt employed; (2) prohibiting the use of ladders on top scaffolds; (3) forbidding workers to ride on mobile scaffolds unless the surface to be driven over was free of hazards.

The Agency requests comments from the shipyard industry about the costs of these provisions, other provisions in the original proposed rule, and the issues raised in this notice, especially the use of interior hung scaffolds.

In order to update the rulemaking record, the Agency solicits information regarding: (1) The annual number of accidents (especially falls) that occur while workers are engaged in erecting or working on scaffolds; (2) the annual number of workers injured; (3) the severity of injuries; and (4) the causes of accidents. OSHA also solicits comments regarding the extent to which shipyard scaffold accidents will be avoided by complying with the proposed rule.

The Agency also requests comments, with supporting information, about the technological feasibility of applying the proposed standard, including the alternatives set out in this notice, to the shipyard industry.

**II. Public Participation**

**Comments**

Written comments regarding the materials incorporated into the subpart N record through this notice must be postmarked by June 13, 1994. Four copies of these comments must be submitted to the Docket Office, Docket No. S-047A, U.S. Department of Labor, room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. (202) 219-7894. All materials submitted will be available for inspection and copying at the above address. Materials previously submitted to the Docket for this rulemaking need not be resubmitted.

**III. Authority**

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655), section 41 of the Longshore and Harbor Worker's Compensation Act, as amended (33 U.S.C. 941), and 29 CFR part 1911.

Signed at Washington, DC, this 6th day of April, 1994.

Joseph A. Dear,  
Assistant Secretary of Labor.

[FR Doc. 94-8687 Filed 4-11-94; 8:45 am]

BILLING CODE 4510-26-P

**DEPARTMENT OF EDUCATION**

**34 CFR Part 361**

RIN 1820-AB12

**The State Vocational Rehabilitation Services Program**

**AGENCY:** Department of Education.

**ACTION:** Notice of meetings and teleconferences.

**SUMMARY:** The Assistant Secretary announces a series of meetings and teleconferences to discuss a preliminary draft of proposed regulations to implement certain provisions of the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1992 and 1993 (the Act).

The meetings and teleconferences will allow interested parties an opportunity to review and discuss the draft proposed regulations prior to the publication of a formal notice of proposed rulemaking in the *Federal Register*. This effort is part of a broader initiative to be more open to input from the various constituencies interested in the programs administered by the Office of Special Education and Rehabilitative Services (OSERS).

The purpose of the meetings and teleconferences is to invite public comment on the draft proposed regulations, especially as these regulations interpret or clarify statutory requirements of the Rehabilitation Act Amendments of 1992 and 1993.

**DATES:** The meetings in Washington, DC, will be held on April 19, 1994, May 12, 1994, and May 17, 1994. The meeting in Chicago, Illinois, will be held on April 26, 1994, and the meeting in Oakland, California, will be held on May 4, 1994. An additional meeting may be held on May 5, 1994, in Oakland, California, if more individuals



are interested in participating than can be accommodated at the May 4 meeting.

The teleconferences are scheduled to be held on April 20, 1994, May 13, 1994, and May 18, 1994.

All written comments may be received on or before May 27, 1994.

**ADDRESSES:** The meetings will be held at the following locations:

1. Washington, DC—Mary Switzer Building, room 3065, 330 C Street, SW., Washington, DC.

2. Chicago, Illinois—Palmer House Hilton, Conference Center, 7th Floor, 17 E. Monroe Street, Chicago, Illinois.

3. Oakland, California—Parc Oakland Hotel, 1001 Broadway, Oakland, California.

Individuals who cannot attend the meetings or teleconferences are invited to send in written comments regarding the draft proposed regulations and the issues identified in the **SUPPLEMENTARY INFORMATION** section of this notice to Howard Moses, Acting Commissioner, Rehabilitation Services Administration, 400 Maryland Avenue, SW., room 3028, Switzer Building, Washington, DC 20202-2531.

**FOR FURTHER INFORMATION CONTACT:**

Persons desiring to participate in the meetings or teleconferences or seeking additional information should contact Beverlee Stafford, 400 Maryland Avenue, SW., room 3028, Switzer Building, Washington, DC 20202-2531. Telephone: (202) 205-9331. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205-5538 for TDD services.

**SUPPLEMENTARY INFORMATION:** The draft proposed regulations would replace existing regulations under 34 CFR part 361 governing The State Vocational Rehabilitation Services Program. These draft proposed regulations, however, do not include the provisions relating to order of selection under 34 CFR 361.36 that were published in the *Federal Register* for comment on July 16, 1993 (58 FR 38482). Final regulations relating to the order of selection requirement will be published as a separate document later this year. In addition, these draft proposed regulations do not implement section 106 of the Act relating to evaluation standards and performance indicators for The State Vocational Rehabilitation Services Program. Proposed regulations implementing section 106 will also be published separately for public comment.

Staff from OSERS and other offices of the Department of Education will be available at the meetings and teleconferences to discuss the draft proposed regulations and provide

technical assistance and clarification of the proposed provisions. Participants are particularly encouraged to express their support for or raise concerns about specific sections of the regulations and, if possible, to provide alternative language if they disagree with the wording in the draft proposed regulations.

**Availability of Copies of the Draft Proposed Regulations**

The draft proposed regulations can be accessed through the RSA Bulletin Board System (BBS) by calling one of the following access numbers: (202) 205-5574 (low speed modems) or (202) 401-6147 (high speed modems, 9,600 bps or faster). If you experience any difficulty in accessing the BBS, please contact either John Chapman at (202) 205-9290 or Teresa Darter at (202) 205-8444, co-system operators (sysops), for assistance. For those individuals unable to access the BBS, copies of the draft proposed regulations are available in regular print, large print, and computer diskette (WordPerfect 5.1 and ASCII formats) by calling (202) 205-5482. A limited number of copies in braille are also available.

**Meeting and Teleconference Information**

The Assistant Secretary encourages interested parties to participate in one of the meetings or teleconferences. There will be three meetings held in Washington, DC. Additional meetings will be held in Chicago, Illinois, and Oakland, California. There will be three teleconferences to allow individuals to participate who cannot travel to the meeting sites. Individuals will have to reserve a space for the meetings or teleconferences. Reservations will be accepted on a first-come, first-served basis. Both meeting space and teleconference lines are limited. Given the level of response expected, individuals should plan on participating in only one meeting or teleconference and should make reservations as soon as possible. When making reservations, individuals must indicate the need for any special accommodations, including sign language interpreters. The meeting rooms and proceedings will be accessible for individuals with disabilities.

The meetings in Washington, DC, will be held on April 19, 1994, from 1 p.m. to 4 p.m.; May 12, 1994, from 9 a.m. to 12 noon; and May 17, 1994, from 9 a.m. to 12 noon. The location for these three meetings is the Mary Switzer Building, room 3065, 330 C Street, SW., Washington, DC. For reservations for the

meetings in Washington, DC, please call Beverlee Stafford at (202) 205-9331.

The meeting in Chicago, Illinois, will be held on April 26, 1994, from 9 a.m. to 4 p.m., at the Palmer House Hilton, Conference Center, 7th Floor, 17 E. Monroe Street, Chicago, Illinois. For reservations for the meeting in Chicago, Illinois, please call Terry Conour at (312) 886-5372.

The meeting in Oakland, California, will be held on May 4, 1994, from 9 a.m. to 4:30 p.m., at the Parc Oakland Hotel, 1001 Broadway, Oakland, California. For reservations for the meeting in Oakland, California, please call Jon Kissinger at (415) 556-3786.

The teleconferences will be held on April 20, 1994, from 2 p.m. to 3:30 p.m. (Eastern time); May 13, 1994, from 2 p.m. to 3:30 p.m. (Eastern time); and May 18, 1994, from 2 p.m. to 3:30 p.m. (Eastern time). A total of 17 sites can be connected to each teleconference. Interested individuals are encouraged to gather at a single site and use a speaker phone to allow a maximum number of individuals to participate on each call. Interested individuals can call Beverlee Stafford at (202) 205-9331 to reserve a line for one of the three teleconferences. Information on how to access the teleconferences will be provided when reservations are made.

(Authority: 29 U.S.C. 701)

Dated: April 8, 1994.

Judith E. Heumann,

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 94-8891 Filed 4-11-94; 8:45 am]

BILLING CODE 4000-01-P-M

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 4**

**RIN 2900-AF22**

**Schedule for Rating Disabilities; Diseases of the Ear and Other Sense Organs**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is proposing to amend its rating schedule regarding evaluation of diseases of the ear and other sense organs. This amendment is necessary in order to comply with a General Accounting Office (GAO) study, which recommended that medical criteria in the rating schedule be reviewed and updated. The intended effect is to update the portion of the Schedule for Rating Disabilities pertaining to diseases